

Exhibit A

Deposition of Daniel P. Goldberg

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

IN RE:

PROMESA

Title III

THE FINANCIAL OVERSIGHT AND

MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3283-LTS

as representative of

(Jointly

THE COMMONWEALTH OF PUERTO RICO,
et al,

Administered)

Debtors.

IN RE:

PROMESA

Title III

THE FINANCIAL OVERSIGHT AND

MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3284-LTS

as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION (COFINA)

Debtor.

DEPOSITION

OF

DANIEL P. GOLDBERG

Thursday, January 10, 2019

101 Park Avenue

New York, New York

Reported by:

AYLETTE GONZALEZ, RPR, CLR, CCR

JOB NO. 153834

1
2 DATE: January 10, 2019

3 TIME: 9:37 a.m.
4
5

6 Deposition of DANIEL P. GOLDBERG, held
7 at the offices of CURTIS, MALLET-PREVOST,
8 COLT & MOSLE, LLP., 101 Park Avenue, New
9 York, New York 10178, pursuant to NOTICE,
10 before AYLETTE GONZALEZ, a Registered
11 Professional Reporter, Certified LiveNote
12 Reporter, Certified Court Reporter and
13 Notary Public of the States of New York and
14 New Jersey.
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A P P E A R A N C E S:

CURTIS, MALLET-PREVOST, COLT & MOSLE

Counsel for Ambac Assurance

101 Park Avenue

New York, New York 10178

BY: MICHAEL MOSCATO, ESQ.

BY: GABRIEL HERTZBERG, ESQ.

BY: JACOB KEARNEY, ESQ.

KASOWITZ BENSON TORRES

Counsel for Whitebox Multi-Strategy

Partners, L.P.

1633 Broadway

New York, New York 10019

BY: TREVOR WELCH, ESQ.

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A P P E A R A N C E S: (CON'T)

REED SMITH

Counsel for Bank of New York Mellon

599 Lexington Avenue

New York, New York 10022

BY: LOUIS SOLOMON, ESQ.

ALSO PRESENT:

HOLWELL SHUSTER & GOLDBERG

BY: BRENDON DeMAY, ESQ.

1
2 (Goldberg Exhibit 1, Declaration
3 of Daniel P. Goldberg was premarked
4 for identification, as of this date.)

5 (Goldberg Exhibit 2, Exhibit D to
6 the Declaration was premarked for
7 identification, as of this date.)

8 D A N I E L P. G O L D B E R G,
9 called as a witness, having been
10 duly sworn by a Notary Public,
11 was examined and testified as
12 follows:

13 EXAMINATION BY

14 MR. MOSCATO:

15 Q. Mr. Goldberg, I'm Mike Moscato.
16 I'm from the law firm of Curtis, Mallet. I
17 represent Ambac in this case.

18 I'm going to show you two documents
19 that have been marked as Goldberg 1 and
20 Goldberg 2. Goldberg 1 is your declaration in
21 this case. And Goldberg 2 is Exhibit D, I
22 believe, to your declaration. I think all the
23 pages are there.

24 All right. Ready to go?

25 A. I'm ready.

1 DANIEL P. GOLDBERG (1/10/19)

2 Q. Can you turn to paragraph 6 of your
3 declaration, please.

4 A. Paragraph 6, not page 6?

5 Q. Paragraph 6, page 2.

6 A. I'm there.

7 MR. SOLOMON: Just one second. I
8 don't need extra copies because I
9 brought mine. Did that exhibit have a
10 first page and then --

11 THE WITNESS: This is two-sided.

12 MR. SOLOMON: I'll do it at a
13 break. Please go ahead. I'm sorry.

14 MR. MOSCATO: I should have handed
15 out copies. If you want one, just let
16 me know.

17 Just for the record, Exhibit 2,
18 which I think is Exhibit D of your
19 declaration, is Document 412-5, all
20 right, just so everyone's on the same
21 page.

22 MR. SOLOMON: Thanks.

23 BY MR. MOSCATO:

24 Q. Mr. Goldberg, you state in
25 paragraph 6 of your declaration that you've

1 DANIEL P. GOLDBERG (1/10/19)

2 been the person responsible for crafting the
3 litigation budget for the trustees in a number
4 of contexts, correct?

5 A. Correct.

6 Q. Have you ever crafted the
7 litigation budget for a trustee in a case that
8 is similar to the actions in this case? And
9 when I say "actions," I mean the Whitebox
10 claim and the Ambac claim.

11 A. You mean a claim by a noteholder
12 against a trustee claiming the trustee failed
13 to act properly in whatever way; is that the
14 meaning of your question?

15 Q. Yes.

16 A. I don't think I have.

17 Q. Okay. Have you ever crafted a
18 litigation budget for a trustee that is being
19 sued for gross negligence, willful misconduct
20 and fraud, but not being sued for negligence?

21 A. I don't believe so.

22 Q. Have you ever crafted a litigation
23 budget for a trustee that is being sued for
24 gross negligence, willful misconduct and fraud
25 at all? Let me restate the question.

1 DANIEL P. GOLDBERG (1/10/19)

2 I made a distinction between a
3 claim for gross negligence, willful misconduct
4 and fraud, but without negligence. Okay?

5 So this question is, have you ever
6 crafted a litigation budget for a trustee when
7 it's being sued for negligence, gross
8 negligence, willful misconduct and fraud?

9 A. I don't believe so.

10 Q. In the cases when you were
11 responsible for crafting the litigation budget
12 for a trustee, at what point in the litigation
13 is it your practice to craft such a budget?

14 A. The most typical time is at the
15 very beginning, the earliest outset, which is
16 not to say it's to the exclusion of other
17 times when it might get revisited, but the
18 time that you create the budget is at the
19 outset of the matter.

20 Q. Now, this is a bit of a
21 hypothetical question, but if you or your firm
22 had been retained by Bank of New York Mellon
23 to represent it in defense of the actions, do
24 you expect you would've created a litigation
25 budget for it, for the litigation?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. Are you asking if my firm were
3 engaged to defend Bank of New York Mellon in
4 the cases that your clients are bringing?

5 Q. Just to be clear, when I say "the
6 actions," I'm talking about the Whitebox
7 complaint and the Ambac complaint. I
8 should've --

9 A. Okay.

10 Q. I should've defined the term,
11 but -- so let me ask the question again.
12 Okay?

13 MR. SOLOMON: And as supplemented
14 with the claims of fraud that you were
15 talking about --

16 MR. MOSCATO: I'm sorry?

17 MR. SOLOMON: As supplemented with
18 the claims of gross negligence,
19 willful misconduct and fraud?

20 MR. MOSCATO: Yeah. Yeah, yeah,
21 yeah.

22 MR. SOLOMON: Got it.

23 MR. MOSCATO: Okay.

24 MR. SOLOMON: Okay. That's the
25 action.

1 DANIEL P. GOLDBERG (1/10/19)

2 BY MR. MOSCATO:

3 Q. Let me ask the question again then.

4 If you've been retained by Bank of
5 New York Mellon to represent it in defense of
6 the actions, do you expect you would've
7 created a litigation budget for Bank of New
8 York Mellon in those circumstances?

9 A. Possibly. The most typical time or
10 circumstances that bring about such a budget
11 is if the client asks for it. If the client
12 doesn't ask for it, it's not unusual not to
13 create such a budget.

14 Q. But if you were asked to create
15 such a budget, you'd probably do it at the
16 beginning of the litigation, that would be the
17 ideal time?

18 A. You just threw in the qualifier of
19 "ideal." It would be the typical time.

20 Q. "The typical time." Okay, good.

21 A. But I think it'd be more accurate
22 to say you'd prepare the budget when the
23 client asks you to prepare the budget, so...

24 Q. Is it your experience that in
25 trustee litigations the trustee will ask you

1 DANIEL P. GOLDBERG (1/10/19)

2 to prepare a budget?

3 A. At some point. It's -- you usually
4 get asked to prepare a budget. It's not
5 always at the outset in the trustee -- in an
6 indenture trustee circumstance.

7 Q. Is it usually?

8 A. Closer to the beginning of the case
9 than the end of the case. I don't know if I
10 can give you a better answer.

11 Q. Can you look at your paragraph 5,
12 please.

13 A. I'm there.

14 Q. You're there? I'm looking at about
15 seven lines down, the sentence beginning "In
16 this role."

17 A. Yes, I'm there.

18 Q. Do you see that?

19 A. I do.

20 Q. You say "In this role, I review,
21 negotiate and approve every nonstandard fee
22 arrangement entered into by the firm. Part of
23 that process entails analyzing what a
24 litigation would cost if the engagement were
25 on a standard hourly fee arrangement." Do you

1 DANIEL P. GOLDBERG (1/10/19)

2 see that?

3 A. I do.

4 Q. Is that essentially the exercise
5 you've undertaken in your declaration?

6 A. If I'm understanding your question
7 correctly, I don't think so. I wasn't asked
8 to evaluate a non-hourly fee arrangement here.

9 Q. Well, to your knowledge, has
10 Reed Smith entered into what you term a,
11 quote/unquote, nonstandard fee arrangement
12 with Bank of New York with respect to the
13 defense of the actions?

14 A. That's -- that's not my
15 understanding. I don't have personal
16 knowledge. I've been given assumptions and I
17 have a certain understanding. And that
18 understanding is that it's anticipated that
19 Reed Smith would proceed on a -- what I'll
20 characterize as a standard hourly basis.

21 Q. And who gave you that
22 representation?

23 A. The team at Reed Smith.

24 Q. Do you know whether Reed Smith has
25 presented Bank of New York with any budget for

1 DANIEL P. GOLDBERG (1/10/19)

2 the defense of the actions?

3 A. I don't know one way or the other.

4 Q. Did you ever ask?

5 A. I did not.

6 Q. Why not?

7 A. That wasn't the assignment that I
8 was asked to perform. I was asked to evaluate
9 on my own without undo influence, if you
10 would, without getting skewed. They wanted to
11 know what I thought it would cost to defend
12 the actions, as you've defined them, and to
13 provide a range. And -- and so I undertook
14 that exercise.

15 I was not asked to look at, for
16 instance, a budget Reed Smith put together and
17 ask if that was a good or bad budget. I was
18 asked to figure out from scratch on my own
19 what I thought it would cost to defend the
20 cases.

21 Q. Would you agree that Reed Smith has
22 a little more background in these actions than
23 you do?

24 A. Of course, yes.

25 Q. Were you at all curious what --

1 DANIEL P. GOLDBERG (1/10/19)

2 whether Reed Smith had provided Bank of New
3 York with a budget?

4 A. It was not significant to the
5 analysis I was asked to perform.

6 Q. If Reed Smith has provided bank of
7 New York with a budget that's materially
8 different than the estimates you give in your
9 declaration, is it your position that that's
10 not relevant?

11 A. Not relevant to what?

12 Q. To a reasonable estimate of legal
13 fees.

14 A. I guess the best way for me to
15 answer your question is to say more
16 information is always better than less
17 information I suppose. But I wasn't asked to
18 opine or provide an estimate as to what
19 another firm's budget would entail or whether
20 it was reasonable.

21 I was asked to evaluate what I
22 thought from start to finish, meaning on my
23 own, what a reasonable range of defense costs
24 would be for these actions and I undertook
25 that. I didn't -- so I don't -- sorry if this

1 DANIEL P. GOLDBERG (1/10/19)

2 is a long way of answering your question.

3 Q. No, take your time.

4 A. So whether Reed Smith had its own
5 budget and whether it provided it to its
6 client or not, it was not something that went
7 into the mix of things I had considered in
8 evaluating what I thought a reasonable range
9 of defense costs could be.

10 Let me -- if I could add to that.
11 If Reed Smith provided a budget that said
12 \$800 million to defend the cases, that would
13 not alter my view as to what I would think a
14 reasonable range of defense costs would be,
15 so...

16 Q. What if Reed Smith gave the client
17 a budget that estimated \$10 million as opposed
18 to the 25 or 40 million range that you have,
19 would that be relevant to you?

20 A. Not particularly because I would
21 think that that would be unrealistic in the
22 context of these cases. And it wouldn't --
23 and it's not unheard of that law firms give
24 clients budgets and then blow right through
25 them. So if the firm -- if Reed Smith or any

1 DANIEL P. GOLDBERG (1/10/19)

2 firm had provided a budget, you asked would it
3 be relevant to would I want to know. I guess
4 on some level. Like I said, more
5 information's always better than less
6 information. But I don't believe it would've
7 altered my view as to what I believe a
8 reasonable range of defense costs would be.

9 Q. Okay, but just to be clear, you're
10 not providing any sort of opinion as to the
11 legal fees -- let me withdraw the question.

12 Are you providing an opinion as to
13 what you believe Reed Smith's legal fees will
14 be in defending the action or are you
15 providing more of a hypothetical -- and I'm
16 not using the term in a derogatory sense, but
17 more of a hypothetical estimate of what legal
18 fees would be in this sort of litigation?

19 A. It's -- on some level it's a bit of
20 a hybrid because I was asked to provide what I
21 thought a reasonable range of the defense
22 costs would be, but I was given certain
23 assumptions to use in order to make that
24 evaluation and some of those assumptions
25 involved specifics about Reed Smith.

1 DANIEL P. GOLDBERG (1/10/19)

2 So I wasn't asked to opine what
3 will Reed Smith spend in this case and I
4 wasn't asked to opine hypothetical law firm A,
5 what would law firm A charge. So it's sort of
6 somewhere between the two --

7 Q. I'm trying to figure out what the
8 between is.

9 A. They gave me rates to assume. I
10 knew they were Reed Smith rates. And from
11 there I crafted what I thought would be a
12 reasonable estimate. So separate and apart
13 from the rates, it didn't matter what firm it
14 would be.

15 Q. Okay. Let me just ask this
16 question, very simple question. Did you ever
17 ask Reed Smith point blank have you provided a
18 budget to Bank of New York Mellon?

19 A. No, I did not ask anyone at
20 Reed Smith that question.

21 Q. Were you -- did you get the sense
22 that you were not to ask that question?

23 A. Absolutely not. It was made quite
24 clear to me that I could have whatever
25 information I thought I needed to have.

1 DANIEL P. GOLDBERG (1/10/19)

2 Q. So the Reed Smith lawyers told you
3 that you could look at their budget, assuming
4 they had a budget, and you decided not to?

5 A. No. You added a layer of
6 specificity that was not intended in my
7 answer. Your prior question asked if I was
8 given the impression that I should not ask for
9 a budget or I should not look at their budget.
10 My response was no, that's not the case. I
11 was told I could have whatever I want. No one
12 ever discouraged me from looking at anything.

13 Q. You just chose not to ask if they
14 had a budget and you chose not to look at a
15 budget, right?

16 A. Correct. For the reasons I have
17 said to you, it wasn't particularly relevant
18 to the assignment I was given.

19 Q. But you do have an understanding
20 that Reed Smith -- well, let me ask the
21 question again.

22 Do you have an understanding one
23 way or the other whether Reed Smith has a
24 nonstandard fee arrangement with Bank of
25 New York as you've -- as you use the term in

1 DANIEL P. GOLDBERG (1/10/19)
2 paragraph 5 of your declaration?

3 A. Can I see the question?

4 (Whereupon, an off-the-record
5 discussion was held.)

6 A. I don't have personal knowledge, so
7 I don't know one way or the other, but I am
8 under the impression that it is a standard
9 hourly fee arrangement.

10 BY MR. MOSCATO:

11 Q. Well, how did you get under that
12 impression?

13 A. Because that was one of the
14 assumptions I was given to craft my opinion.

15 Q. Do you have an understanding one
16 way or the other -- well, let me --

17 A. I should -- can I modify that last
18 question?

19 Q. Listen, say anything you want to
20 say in response to a question. All right?

21 A. That's an inference that I drew
22 from the assumptions I was given. I was told
23 to use certain rates and work up what I
24 thought would be a reasonable range of defense
25 costs based on those rates, which led me to

1 DANIEL P. GOLDBERG (1/10/19)

2 conclude that it's an hourly billing
3 arrangement. If it were a flat fee, the
4 hourly rates would be irrelevant.

5 Q. Now, if you -- so you understand
6 that -- you were given some rates, correct?

7 A. Correct.

8 Q. Do you know one way or the other
9 whether Reed Smith has agreed with Bank of New
10 York to discount those rates?

11 A. I do not know one way or the other.

12 Q. Did you ask?

13 A. I did not ask.

14 Q. And that would not have been
15 relevant to your declaration; is that why you
16 didn't ask?

17 A. I was given -- I was told to assume
18 certain rates, so I used those rates. If you
19 change those rates, yes, it would change the
20 analysis.

21 Q. So if you were given rates. But in
22 reality, there was an agreement to have a
23 discount for those rates; that would change
24 your declaration, wouldn't it?

25 A. Certainly if the actual rates turn

1 DANIEL P. GOLDBERG (1/10/19)

2 out to be different than the rates that I was
3 given, that would change the conclusion, yes.

4 Q. Do you know if Reed Smith has
5 agreed with Bank of New York to put a cap on
6 its legal fees in the actions?

7 A. I don't know one way or the other.

8 Q. And, again, you did not ask?

9 A. I did not ask.

10 Q. Does your estimated budget
11 distinguish between the cost of defending
12 against the Ambac complaint versus the
13 Whitebox complaint?

14 A. It assumes that they will be
15 defended together, meaning that the cases will
16 either be consolidated or at least coordinated
17 so that it will all happen as a practical
18 matter as one lawsuit so that efficiencies
19 will be achieved. That's the assumption.

20 Q. And the one lawsuit basically --
21 I'm sorry, withdrawn.

22 Is your assumption that once the
23 complaints are amended, if they're amended,
24 that they will be quite similar to each other
25 insofar as the allegations?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. I don't know that I thought about
3 it in that way. I assumed that the crux of
4 the claims that would be asserted by the two
5 holders would be similar, and so the scope of
6 the litigation for their claims would be
7 similar. That is the assumption that I had.

8 Q. Can you go to paragraph 38 of your
9 declaration, please. It's page 7. I'm
10 looking at the first sentence. And you state
11 "First, I understand that Bank of New York
12 Mellon has but a single opportunity in advance
13 to set a holdback." Do you see that?

14 A. I do.

15 Q. What's the basis for your
16 understanding?

17 A. It's one of the assumptions I was
18 given by Reed Smith. And from reading
19 generally some of the pleadings, my
20 understanding is that as part of the
21 confirmation process, the Court's going to
22 make a determination as to whether there will
23 be a holdback; and if so, how much.

24 Q. Well, you use the term "holdback."
25 What do you mean by "holdback"?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. As I understand it, there will be
3 certain distributions that will be made to
4 interest holders in what I'll call the estate,
5 which is a little bit of a -- this is somewhat
6 of a sui generis proceeding. And a certain
7 amount of money will not be distributed to
8 interest holders and held back to fund the
9 defense of Bank of New York Mellon. I should
10 put in the emphatic caveat, I've not been
11 asked to opine on that and I'm not offering an
12 opinion on that; you just asked the question
13 as to what my understanding is, and so I gave
14 it to you.

15 Q. You just saved me a question.

16 A. Okay.

17 Q. Have you read the paragraph 19.5 of
18 the plan?

19 A. I have.

20 Q. Okay. Well, let me ask a follow-up
21 question.

22 After the first sentence I just
23 read, you state "As a result, prudence
24 dictates that all reasonable possible
25 litigation contingencies be reserved to ensure

1 DANIEL P. GOLDBERG (1/10/19)

2 that Bank of New York receives the benefit of
3 its bargained-for indemnification rights." Do
4 you see that?

5 A. I do.

6 Q. Okay. Just following up on the
7 caveat you gave me a moment ago, I take it
8 you're not providing a legal opinion
9 concerning what those, quote/unquote,
10 bargained-for indemnification rights are?

11 A. No.

12 Q. That's not your province in this
13 litigation, right?

14 A. Correct. I have some modicum of
15 experience in the area, but it is not one of
16 the opinions that I'm offering in this case.

17 Q. Okay. When you prepare actual
18 budgets for your trustee clients, do you
19 include in them all reasonable possible
20 litigation contingencies?

21 A. I give a range of what I believe to
22 be the reasonable range of contingencies, and
23 I think uniformly I give the caveat that
24 litigation inherently is uncertain and things
25 can happen that could cause cost to be either

1 DANIEL P. GOLDBERG (1/10/19)

2 higher or lower than the estimate.

3 Q. But I guess I'm focusing on the
4 word "possible." The quote you use is "all
5 reasonable possible litigation contingencies."

6 Is it your practice when you
7 prepare actual budgets for your trustee
8 clients to include in them all reasonable
9 possible litigation contingencies?

10 A. So long as you keep the word
11 "reasonable" in there, my answer is yes. I
12 think I intended to say the same thing. If I
13 said something differently, then I misspoke.

14 Q. You didn't misspeak.

15 A. Okay.

16 Q. Is it accurate to say that your
17 declaration assumes that the Court, Judge
18 Swain, will order that some amount be withheld
19 from Ambac and Whitebox as distributions under
20 the plan rather than the judge ordering
21 Whitebox or Ambac to post a bond?

22 A. No.

23 Q. Does your report talk at all about
24 the possibility of Ambac or Whitebox posting a
25 bond rather than having a distribution

1 DANIEL P. GOLDBERG (1/10/19)
2 withheld?

3 A. It wasn't something that I was
4 asked to opine on, so it's not addressed or
5 analyzed. But you ask if my opinion, if I
6 recall it correctly, either hinges upon or
7 assumes or is based upon the assumption or
8 conclusion that they'll be a holdback versus a
9 bonds. The answer to that is no.

10 The opinion I've been asked to
11 provide is a reasonable range of defense costs
12 to defend the actions that your clients are
13 bringing. That's the extent of the opinion.
14 If you want my view as to the efficient way to
15 handle that, I'm happy to give it to you. But
16 the opinion that I was asked to provide --

17 Q. Well, if it's not part of your
18 opinion, no offense, but I'm really not
19 interested in your views other than what are
20 part of your opinions.

21 A. I understand. So my opinion is
22 about the reasonable range of defense costs to
23 defend the actions.

24 Q. But is your reasonable range -- the
25 reasonable range that you give in your

1 DANIEL P. GOLDBERG (1/10/19)

2 declaration, is that informed at all by your
3 assumption that there is but a single
4 opportunity in advance to set a holdback?

5 A. On some level -- well, you said
6 "holdback." Do you mean -- are you
7 intentionally distinguishing between a
8 holdback and a bond?

9 Q. I thought you were, but I guess
10 you're not. So no, I'm not. You want me to
11 rephrase the question then?

12 A. Please.

13 Q. Is the reasonable range that you
14 provide in your declaration informed at all by
15 your assumption that there is but a single
16 opportunity in advance to set either a
17 holdback or a bond?

18 A. On some level. The lower range of
19 the estimate that I came up with I believe to
20 be conservative, meaning it's on the -- it's a
21 low range on -- because it's a low range, I
22 believe that to be conservative. That said,
23 as I understand it, the money is to be set
24 aside if it's a holdback and any money not
25 spent would get returned. And this is the one

1 DANIEL P. GOLDBERG (1/10/19)

2 opportunity -- again, this is my understanding
3 in the assumptions I've been given. This is
4 the one opportunity to set that amount.

5 So in that sense if there's a
6 question as to whether to include an expense
7 or category of expense or not, the fact that
8 this is the only shot that they get to have
9 that amount set; and if it's not spent, the
10 money goes back, the money gets returned, that
11 might have made me lean in a circumstance or
12 two to include something.

13 Q. To include something or to exclude
14 something?

15 A. Include in the estimate.

16 Q. So the fact that you believe
17 there's only a one-time shot to set either a
18 bond or a holdback, that would cause you to
19 include certain expenses that you might not
20 include otherwise; is that basically what
21 you're saying?

22 A. That puts it into stark alight. If
23 it's around the margins, that could be the
24 case. It's not as if -- to take an example,
25 it's not as if I included deposition costs.

1 DANIEL P. GOLDBERG (1/10/19)

2 But if I thought they were going to have
3 another opportunity to go back to the Court
4 and have a holdback set, I wouldn't have
5 included deposition costs. It's not that
6 stark. It's just sort of at the margins.

7 Q. Do you have an understanding one
8 way or the other whether at least it's Ambac's
9 position that the Court should set a bond as
10 opposed to a holdback?

11 A. I have come to learn that, yes.

12 Q. And have you come to learn that
13 it's Ambac's position that not only should the
14 Court set a bond, if there's any security
15 whatsoever, that if -- if the Court is to set
16 a bond, it should be a stayed bond?

17 A. I think I learned that for the
18 first time yesterday when I read your brief.

19 Q. What's your view of that?

20 A. So you gave me an instruction
21 before.

22 Q. Well, no --

23 A. I'm happy to give you my view. I'm
24 happy give you my view.

25 Q. Would that be a more efficient way

1 DANIEL P. GOLDBERG (1/10/19)

2 of setting -- of estimating legal fees here;
3 in other words, to do it -- to say, okay, here
4 are going to be the legal fees up through the
5 motion to dismiss, let's do that, and then if
6 we get past the motion to dismiss, what are
7 the legal fees? Answer: Discovery, summary
8 judgment. You get through that. What are the
9 legal fees for trial? You get the point.

10 And the question is, isn't that a
11 more efficient way of estimating what will be
12 the true cost of the litigation rather than
13 what you've done in your declaration?

14 A. So with the caveats that we
15 discussed before about the contours of -- and
16 parameters of my opinion, with those caveats
17 applying, I say to you I think that's actually
18 a particularly inefficient way to do it for a
19 few reasons. And it probably raises more
20 questions than it provides answers.

21 Who determines the amount at the
22 individual phases? They would be a problem.
23 You would -- in the scenario you described,
24 you likely would have a circumstance where the
25 parties would engage in seriatim motion

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2 practice litigating the amount of the seriatim
3 bonds that you're proposing. You have the
4 dynamic where the Plaintiff is attempting to
5 have influence and dictate what the Defendant
6 gets to spend to defend the case effectively
7 or you're -- you're having the Plaintiff
8 having put on how vigorous a defense the
9 Defense gets to have. That's troublesome.

10 So in those -- and for those
11 reasons, the notion of having the Defendant
12 have to come back periodically and effectively
13 beg for more money at every stage of the case
14 and have a fight about that every time that
15 happens is actually not a particularly
16 efficient way to proceed.

17 If you overlay on that, my
18 understanding -- and, again, this my
19 understanding. If it's incorrect, things
20 could change. Whatever the Court does at the
21 outset in terms of a holdback, if there's a
22 holdback, if that money's not spent, it gets
23 returned. And moreover, at the end when
24 there's the final fee application, as I'm told
25 and I understand to be the case, your clients,

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the holders, then have an opportunity to challenge the reasonableness of the fees overall. It strikes me that setting it all at once protects all the parties and has the virtue of having the matter resolved and not having one litigant in the pocket of the other litigant or sticking his hands or fingers in the pocket of the other litigant trying to dictate how much gets spent by one's adversary, which strikes me as fraud with peril.

So I think it's -- I wasn't asked to opine on this and therefore that's why you see it's not in the report, but you have asked me --

Q. I have asked you.

A. I think it's not actually particularly an efficient way to do it.

Q. One thing I couldn't tell from your report, and I'd like you to clarify, are you assuming that -- when you say that Bank of New York -- or I'm sorry. When you say that Ambac or Whitebox could get the money back at the end if it wasn't spent, do you have an

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2 understanding that Ambac and Whitebox are
3 responsible for the legal fees even if they
4 prevail in the litigations?

5 A. Who's the "they"?

6 Q. Ambac and Whitebox.

7 A. You're asking -- just to make sure
8 I understand the question -- if Ambac and/or
9 Whitebox prevail are they then still obligated
10 to pay the defense costs of Bank of New York
11 Mellon; is that your question?

12 Q. Yes.

13 A. I don't know.

14 Q. You don't know one way or another?

15 A. I don't.

16 Q. So when you talk about getting the
17 money back, right, getting the unspent money
18 back, are you making a distinction between
19 what Whitebox and Ambac would get back if they
20 actually -- if BNY were actually found liable
21 for gross negligence, et cetera, rather than
22 BNY prevailing?

23 A. The way you phrase that, I think
24 that might call into question whether they get
25 back money that was actually spent. The point

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2 I was making is that if the money is not spent
3 from the holdback, that money goes back.

4 Q. Right. I understand that.

5 A. Okay.

6 Q. I understand that that's what
7 you're saying, but my question to you is,
8 let's say BNY spends the money to defend
9 themselves, but then either a Court or a jury
10 finds that BNY was liable for gross
11 negligence, willful misconduct or intentional
12 fraud, what's your understanding as to whether
13 BNY gets to keep the money they spent in that
14 circumstance?

15 A. I don't have an opinion on that in
16 this circumstance. Typically indenture
17 trustees get their defense costs paid
18 regardless. But I don't have an opinion on
19 that in this case, I have not evaluated that,
20 I have not looked at the specific indenture on
21 that issue here at all. I don't have a view
22 one way or the other.

23 Q. It's your experience that indenture
24 trustees get their legal fees back if they're
25 found liable for gross negligence, willful

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2 misconduct or intentional fraud?

3 A. I'd have to look at that more
4 thoroughly, honestly. I don't know that I
5 have evaluated that specific question, is
6 probably a better way to answer that question.

7 Q. Are you aware of the interpleader
8 litigation that's occurred in connection with
9 the COFINA Title III case?

10 A. At a reasonably high level, I am
11 aware of it.

12 Q. What do you know -- what's your
13 understanding of that litigation?

14 A. That there was a dispute over --
15 different constituencies were seeking -- or
16 believed they were entitled to the proceeds
17 from the various sales and used tax revenues.
18 There was a fight about how that money was to
19 be distributed. There wasn't enough money to
20 make everyone whole. And so the interpleader
21 action was started to sort that out, is
22 probably the extent to which I know.

23 Q. Have you reviewed any of the
24 pleadings in the interpleader litigation?

25 A. I may have, but as I sit here I

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2 can't recall specifically.

3 Q. Do you recall specifically
4 reviewing any of Bank of New York's pleadings
5 in the interpleader litigation?

6 A. Same answer. I may have, I don't
7 recall specifically as I sit here.

8 Q. Do you have an understanding one
9 way or the other whether during the course of
10 that litigation certain issues that relate to
11 the actions; in other words, the Whitebox and
12 Ambac complaint, were the subject of motions
13 for summary judgment?

14 A. I understand that there were
15 motions for summary judgment and that those
16 issues could touch upon issues that will be
17 relevant to what you've characterized as the
18 actions.

19 Q. Well, what's your specific
20 understanding in that regard?

21 A. That there was some motion practice
22 over whether there were or were not certain
23 specific events of default.

24 Q. And specifically events of default
25 in 2017, correct?

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2 A. That's my understanding.

3 Q. That's your understanding.

4 Now, you understand that the Ambac
5 complaints against Bank of New York alleges
6 that between September 2015 and May 2017 there
7 occurred seven events of default -- seven
8 events that Ambac contends constituted events
9 of default under the resolution; you're aware
10 of that, right?

11 A. I thought there were six, you're
12 saying seven. That's fine. Yes, I'm aware
13 that in the main, that's Ambac's claim.

14 Q. And you've read the Ambac
15 complaint, I take it, right?

16 A. I have.

17 Q. And your understanding, just to be
18 clear, is that certain of those events,
19 specifically the ones occurring in 2017, were
20 at issue in the interpleader litigation,
21 right?

22 A. My understanding is that the two
23 alleged events of default from 2017 were at
24 issue in the interpleader. The others were
25 not.

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2 Q. And do you understand that at least
3 five different parties submitted summary
4 judgment motions in connection with the
5 interpleader litigation?

6 A. I knew various parties moved. I'm
7 not sure I knew the actual number.

8 Q. But you do understand that Bank of
9 New York was one of those parties?

10 A. I did understand that.

11 Q. And that Ambac was one of those
12 parties?

13 A. I think I assumed that, yes, I
14 think that was my understanding.

15 Q. Were you told that or just assumed
16 that?

17 A. I think I was told that.

18 Q. Did you discuss the interpleader
19 litigation with Reed Smith counsel?

20 A. In -- on some level, yes.

21 Q. Well, what level is some level?

22 A. To the extent there was overlap
23 between the work that was done in the
24 interpleader action and the work that would
25 need to be done in these actions.

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2 Q. But you do understand that one of
3 the issues in the summary judgment motions in
4 the interpleader action was whether or not an
5 event of default under the resolution had
6 occurred in 2017; you are aware of that,
7 right?

8 A. My understanding is that was one of
9 the issues, yes.

10 Q. And the two events of default that
11 you were talking about -- well, the two
12 alleged events of default you were talking
13 about in 2017 that were at issue in the
14 interpleader action are also in dispute in the
15 Ambac complaint; is that your understanding?

16 A. That is my understanding.

17 Q. In connection with the interpleader
18 litigation, do you have an understanding one
19 way or the other about the following: Do you
20 have an understanding whether Bank of New York
21 drafted requests for production to various
22 parties including Ambac?

23 A. Production of documents?

24 Q. Yes. Requests for production of
25 documents to various parties; do you have on

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2 understanding one way or the other?

3 A. I understand there was -- there was
4 document discovery in the interpleader
5 actions. So from that I infer that the
6 parties drafted requests for production. No
7 one specifically told me whether Bank of
8 New York drafted document requests. I assumed
9 they did.

10 Q. But you didn't ask that?

11 A. I assumed they did because if
12 I'm -- if what I'm told is that there was
13 document discovery, that happens only in
14 response to requests.

15 Q. And did you also assume that Bank
16 of New York responded to requests for
17 production from various parties including
18 Ambac?

19 A. Yes.

20 Q. And do you have an understanding
21 one way or the other whether Bank of New York
22 collected, preserved and reviewed documents in
23 response to requests of production that it
24 received from various parties in the
25 interpleader?

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2 A. That would fall within the ambit of
3 the answer I gave a moment ago. I am under
4 the understanding, pardon the redundancy, that
5 document discovery occurred. In parcel with
6 that, from that I inferred that all the usual
7 things that happen with a document production
8 happened.

9 Q. But did you ever talk to the
10 Reed Smith lawyers just about the specific
11 details of -- of the discovery process?

12 A. No, not in any particular level of
13 detail.

14 Q. Do you have an understanding
15 whether Bank of New York actually produced
16 documents in the interpleader litigation in
17 response to requests for production from
18 various parties?

19 A. I am under the impression they
20 did -- it did.

21 Q. Well, what gave you that
22 impression?

23 A. Same -- falls within the ambit of
24 the answer I gave previously. I am advised
25 that document discovery occurred in the

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2 interpleader action. From that I inferred
3 that all the usual things that happen in
4 document discovery in fact happened, which
5 includes people drafting requests, people
6 responding to requests, parties reviewing
7 their own documents, parties producing
8 documents, parties reviewing the documents the
9 other side produced. I assumed all that
10 happened and -- I infer all that happened, I
11 should say. And I infer that from the fact
12 that I was told that document discovery took
13 place in the interpleader. That's the extent
14 of the --

15 Q. Do you have any idea whatsoever how
16 much time counsel for Bank of New York spent
17 in the discovery process in the interpleader
18 action?

19 A. I do not.

20 Q. Do you have any idea whatsoever how
21 many pages of documents BNY produced in the
22 interpleader litigation?

23 A. I do not.

24 Q. Do you have any idea how much time
25 Bank of New York attorneys spent reviewing

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2 documents produced from other parties in the
3 interpleader litigation?

4 A. I do not.

5 Q. Do you have an understanding one
6 way or the other whether Bank of New York
7 performed a case assessment, at least with
8 respect to the 2017 events that Ambac contends
9 were events of default, in connection with the
10 interpleader litigation? I can re-ask if
11 you'd like.

12 A. I want to make sure I understand
13 it. I did not have discussions about that
14 specifically. My understanding is that
15 probably did, but that's only based on me
16 supposing that here as I sit here now. I did
17 not have that discussion.

18 Q. Well, wouldn't you be surprised if
19 they didn't?

20 A. It would be surprising if they
21 didn't.

22 Q. But you have no idea how much time
23 Bank of New York's attorneys would have spent
24 in the interpleader litigation on case
25 assessment, at least with regard to the 2017

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2 events that Ambac contends were events of
3 default; is that correct?

4 A. I do not know how much time they
5 spent.

6 Q. And you never asked?

7 A. I did not ask.

8 Q. Do you have an understanding one
9 way or the other whether Bank of New York
10 identified various legal defenses as to why it
11 was not obligated to declare an event of
12 default or accelerate the COFINA bonds in
13 connection with the 2017 events that Ambac
14 claims were events of default?

15 A. I certainly do not know the
16 specifics. I know that the matter was
17 litigated, so I am under the impression that
18 they asserted defenses into each.

19 Q. But you have no idea what defenses
20 they asserted?

21 A. I don't know what defenses they
22 asserted.

23 Q. And you've never looked at the
24 summary judgement briefs to see what defenses
25 they've asserted?

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2 A. I didn't say that. I may have
3 looked at some of the interpleader pleadings
4 and it may have included some of the summary
5 judgment filings. I just can't recall one way
6 or the other as I sit here. I might have, I
7 might not have.

8 Q. But you don't discuss that in your
9 declaration at all, do you?

10 A. I do not know, no.

11 Q. Do you have any idea how much time
12 Bank of New York's attorneys spent identifying
13 various legal defenses as to why it was not
14 obligated to declare an event of default or
15 accelerate the COFINA bonds in connection with
16 the interpleader litigation?

17 A. I do not. I didn't view it as
18 relevant to the assignment I was given.

19 Q. And why was that?

20 A. Why was it not relevant; is that
21 the question? One, that I wasn't asked to
22 evaluate how much it would cost to litigate
23 the interpleader action, so I wasn't focused
24 on that. The amount of time that Reed Smith
25 actually spent wasn't anything I was asked to

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2 evaluate or the reasonableness of that time.

3 I was asked to estimate what I believe to be a
4 reasonable range of the defense costs. So
5 it's conceivable Reed Smith spent an
6 unreasonable amount of time litigating that
7 case. Whether too much or too little, I
8 wasn't asked to evaluate that.

9 So you're asking me these questions
10 did I know how much time they spent and do I
11 know what they billed for this and that. I
12 suspect if you wanted to stipulate that
13 whatever Reed Smith did was a reasonable
14 amount, they'd probably take you up on that,
15 but that was not the assignment I was asked to
16 do.

17 Q. But when you're in your declaration
18 estimating the amount -- a reasonable fee for
19 defending the cases, do you make any efforts
20 to subtract from that reasonable amount work
21 that Bank of New York's counsel has already
22 done in the interpleader litigation?

23 A. Yes.

24 Q. How do you do that?

25 A. In the number of hours that I

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estimated people would spend, I factored in -- and I even say in the report that were factored in certain efficiencies and the elimination of certain redundancies from work that was already done. That's a limited value, however. I mean, it involved some reduction in my hours' estimates, but the -- it's not that hour for hour whatever was done in the interpleader action could get fully credited as defending the actions as defined them that are at issue here. The claims are different, the events of default do not totally overlap.

As I understand it, there were no depositions in the interpleader action. When there are depositions, presumably that will be a year from now or at least several months from now, so when you get to the point of having to do depositions, even if there was a document review two years ago, people are going to have to re-review the documents anyway because people don't memorize documents from large-scale productions from years ago. So while I did account for it in my hours'

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2 estimates, it's -- in my opinion, it's not
3 going to result in a dollar-for-dollar or
4 hour-for-hour reduction. It just doesn't work
5 that way.

6 Q. Well, then how specifically did you
7 account for it?

8 A. I probab- -- when I estimated
9 hours, I just lessened on the document
10 production because that's really the only
11 thing that I think really has any kind of
12 meaningful impact on the cost. I lessened the
13 number of hours that I thought lawyers would
14 take on the document production factoring in
15 that some of that work had been done.

16 Mind you, a lot of that work has
17 not been done, right? The claims are
18 different, the amounts of default are
19 different, the time frame is different. Those
20 are going to be all new documents, at least
21 that's my assumption.

22 Q. Well, they're not going to be all
23 new documents for 2017, are they?

24 A. No, that's why I would have -- I
25 did lower the hours' estimates because two of

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2 the events of default overlap. And to the
3 extent the parties produce documents
4 concerning those two alleged events of
5 default, they would not have to reproduce
6 them. They still would have to re-review
7 those documents, however, when they get to the
8 deposition phase in evaluating the case.

9 Q. Well, in your declaration do you
10 say anywhere how much you reduced your
11 estimate of legal fees based on the work that
12 had been done? Do you quantify it?

13 A. Do I say how many hours
14 specifically I lessened?

15 Q. Yes.

16 A. May I look at the document for a
17 moment?

18 Q. You can do anything you'd like.
19 You know, if you'd like, we can take a break
20 and you can look at your report during the
21 break and we can revisit this question.

22 A. If you want to take a break, that's
23 fine with me.

24 Q. No.

25 MR. SOLOMON: Do you have an extra

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2 copy of the report? Thank you very
3 much.

4 MR. MOSCATO: That's why I'm
5 suggesting we take a break so he
6 doesn't have to read the whole report.

7 MR. SOLOMON: We're just trying to
8 be mindful of a couple of depositions
9 today and don't want to be wasting any
10 time. That's all. If you want to
11 take a short break, we --

12 THE WITNESS: If you want to do
13 that, that's fine.

14 MR. MOSCATO: We're going to take
15 a break in the hour range anyway,
16 so...

17 THE WITNESS: And we're there. So
18 if you want to take a break, that's
19 fine.

20 MR. MOSCATO: Off the record.

21 (Whereupon, at this time, a short
22 break was taken.)

23 MR. WELCH: I want to formally
24 appear for the record. My name's
25 Trevor Welch, Kasowitz Benson Torres.

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2 I'm appearing for Whitebox

3 Multi-Strategy Partners, L.P.

4 BY MR. MOSCATO:

5 Q. I think there's a question pending.

6 A. There's a question pending.

7 The report does not delineate a
8 specific number of hours that were excluded
9 that would be related to the document review
10 production and other work in connection with
11 the interpleader action.

12 The way I worked up my estimate was
13 I considered the work that needed to get done
14 and looking at four events of default over a
15 two-year period and the related ancillary
16 issues that would come up with that is how my
17 estimates were built. So I would say it
18 excluded the fact that there were two events
19 of default in 2017 from the work I assumed had
20 to be done.

21 Q. So it's your testimony that the
22 estimate of legal fees in your declaration
23 just covers the pre-2017 events of default?

24 A. No. It covers -- I didn't -- I'm
25 not litigating the case, so I don't have

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2 sufficient insight to opine as to exactly
3 every last little thing that's going to be
4 subject to discovery in the actions. I'm
5 saying that when I did my estimate, I did my
6 best to exclude the amount of time it would
7 take to produce documents that were already
8 produced in the interpleader action that
9 would've been related to the 2017 alleged
10 events of default.

11 Q. But I'm curious how you could have
12 done that if you don't know how much time
13 Reed Smith spent on the 2017 activities in
14 connection with the interpleader litigation?

15 A. I wasn't evaluating how much time
16 Reed Smith took to do anything. I was
17 estimating what I thought was a reasonable
18 range for the work that I thought would need
19 to be done for a case like this. Again, I
20 wasn't Monday morning quarterbacking what
21 Reed Smith did to evaluate whether what they
22 did was reasonable. I was doing it from whole
23 cloth with certain assumptions that were given
24 to me to estimate what I thought would be a
25 reasonable range.

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2 Q. So to be clear, and I don't want to
3 put words in your mouth so correct me if I'm
4 wrong, but your opinion, your declaration is
5 not an attempt to estimate what Reed Smith
6 will actually spend or charge Bank of New York
7 in connection with the defense of the actions;
8 is that fair?

9 A. I think that's reasonably accurate.
10 My -- what I was attempting to do was evaluate
11 what I believe to be a reasonable range of the
12 defense costs. Whether Reed Smith or any
13 other firm charges what I believe to be a
14 reasonable range or some other range was not
15 what I was asked to opine.

16 Q. Again -- and if I asked this,
17 forgive me, I'm trying not to be repetitive --
18 does the legal fee estimate you provide in
19 your declaration take into account all the
20 activities that were performed on Bank of
21 New York Mellon's behalf during the
22 interpleader litigation?

23 A. Yes, I did my best to do so.

24 Q. But you can't assign a dollar value
25 to any reduction in your estimate as a result

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2 of those interpleader-related activities?

3 A. I didn't -- the analysis I did
4 didn't lend itself to a reduction the way you
5 have articulated it. I evaluated the work
6 that I believe needed to get done and
7 estimated the costs for that. I did not
8 include in the universe of work that I thought
9 to get done, to the best of my ability, work
10 that I believe had already been done in the
11 interpleader action. But, again, with keeping
12 in mind, it would not have been an
13 hour-for-hour or dollar-for-dollar reduction.

14 Q. But what work did you exclude from
15 your declaration based on what had been
16 performed during the interpleader litigation?
17 And I'd like you to be as specific as possible
18 here.

19 A. So the most significant things is
20 what I told you, that the universe of
21 documents that would need to be produced would
22 be, at least to a certain degree, smaller
23 because some of those documents already had
24 been produced in the interpleader action.

25 In addition, I suppose on some

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2 pre-answer motion matters, some legal issues
3 that might pertain to the 2017 alleged events
4 of default, some of that work might already
5 have been done, but not in toto because you're
6 going to have different legal fee reasonability
7 in here that were at issue in the interpleader
8 action because of the nature of the claims
9 that are left to be asserted by your client.
10 So even in that respect, the briefing in the
11 main will still have to get done on -- on --
12 for motion practice, but I suppose at least
13 theoretically some of that work has been done.

14 Q. But you can't quantify?

15 A. I did not quantify it in the report
16 in that way. I did not evaluate what do I
17 think the reasonable amount of money it
18 would've taken to litigate the interpleader
19 action and then let me -- and evaluate what
20 that number is and then not include that. I
21 didn't look at it that way. That's not the
22 way I performed the assignment.

23 Q. But you also didn't really try to
24 investigate what exactly had been done in the
25 interpleader litigation, did you?

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2 A. You use the word "investigate." I
3 certainly didn't investigate. I was told what
4 was done and I had high-level discussions
5 about it because that's all I thought I needed
6 to know in order to do the assignment that I
7 was doing, keeping in mind I was evaluating --
8 and I'm sorry I keep saying this over and over
9 again. I was evaluating what I believed to be
10 a reasonable range of defense costs for these
11 actions. I was not focusing on what was a
12 reasonable amount of money to spend to
13 litigate the interpleader action.

14 Q. And you have no idea one way or the
15 other how much Reed Smith has billed Bank of
16 New York Mellon to date in connection with the
17 interpleader action, right?

18 A. I do not know.

19 Q. Do you have any idea how much
20 Reed Smith has billed Bank of New York Mellon
21 to date in connection with the actions
22 themselves?

23 A. I do not know.

24 Q. And you never asked?

25 A. I did not ask.

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2 Q. Because it's not relevant to your
3 assignment?

4 A. Correct. Again, as I say, if you
5 all wanted to stipulate that whatever
6 Reed Smith charged was reasonable, you might
7 be able to strike a deal, but that wasn't part
8 of my assignment.

9 Q. Well, that's really not the point.

10 A. It wasn't part of my assignment to
11 evaluate anything that Reed Smith actually
12 specifically did.

13 Q. So is it your opinion that it's --
14 it would not be appropriate in estimating Bank
15 of New York's legal fees going forward in
16 connection with the actions to take into
17 account the legal fees it's incurred to date
18 in connection with the actions?

19 A. I didn't say that. I'm not
20 suggesting it would be inappropriate. I'm
21 saying that's not how I did it and that's not
22 how I would do it.

23 Q. Does your declaration estimate
24 legal fees starting at a particular point in
25 time?

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2 A. You mean temporally?

3 Q. Yes, temporally.

4 A. No.

5 Q. During a certain period, does it --
6 for example, does your declaration attempt to
7 estimate legal fees that BNY will incur post
8 plan confirmation?

9 A. That wasn't the framework under
10 which I was doing my work. I was doing my
11 analysis with reference to the stages of the
12 litigations, the actions -- sorry, the stages
13 of the actions. It was not tethered in any
14 way to the date when that work would begin.

15 Q. And when you say "the stages," you
16 began from the very first stages of the
17 litigation, right?

18 A. Yes. My assumption is that the
19 holders will -- Ambac and Whitebox will amend
20 their complaints and the -- effectively start
21 anew. That's my -- that's my assumption.

22 Q. The cases will start anew, and so
23 your -- your estimate assumes that the case is
24 starting anew?

25 A. My estimates assume that there will

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2 be amended complaints and the case will start
3 to get litigate from there substantively.
4 That's -- that's my assumption.

5 Q. Is it your understanding one way or
6 the other whether Ambac and Whitebox may be
7 responsible for legal fees related to the
8 actions that were incurred by Bank of New York
9 Mellon prior to the effective date of plan?

10 A. I have no opinion one way or the
11 other.

12 Q. Well, what does your declaration
13 assume?

14 A. I don't believe it does. I don't
15 believe it addresses that issue.

16 Q. Well, let me put it this way. Does
17 your declaration attempt to estimate legal
18 fees that Bank of New York will incur post
19 effective date of the plan?

20 A. No aspect of the work that I did
21 was tethered to a date, a commencement date
22 like you've talked about. So the evaluation I
23 did was trying to ascertain a reasonable range
24 of defense costs for the actions. It was
25 entirely untethered to a date on the calendar

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2 as to when that work would begin. So whether
3 it's pre-confirmation, post-confirmation, not
4 addressed, I -- it's not part of the analysis
5 that I did and I have no opinion on that.

6 Q. Can you turn to paragraph 63 of
7 your report for, please. And I might be
8 flipping back and forth between your report
9 and your Exhibit D.

10 A. Okay.

11 Q. So you state in paragraph 63,
12 "Based on my experience in complex litigation
13 matters, my opinion is that Bank of New York
14 Mellon will reasonably spend approximately
15 1 million to 2.25 million (1400 to 2700 hours)
16 on case assessment, development and
17 administration over the life of the
18 anticipated litigations." Do you see that?

19 A. I do.

20 Q. Now, where -- where in your
21 Exhibit D do those numbers come up?

22 A. If you look at -- so what I'm going
23 to call page 1 of Exhibit D, can you see there
24 are --

25 Q. I do see that. There's a line item

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2 that says "low or reasonable estimate," it's
3 1,112,000. And then you have 1390 hours. Is
4 that it?

5 A. Correct. So in the body of the
6 report, I used round numbers just for ease of
7 reading. The details are in the schedule.

8 Q. Sure. How exactly did you arrive
9 at those numbers?

10 A. I built them up from the ground up.
11 So you see, for instance, you take the -- if
12 you take the row that reads "Fact
13 investigation" and you see it's the low end,
14 it's 750 hours. I didn't start at 750 hours.
15 I said, okay, for the fact investigation over
16 the life of the matter -- and a good chunk of
17 it takes place at the early stages, but this
18 is intended to be an estimate over the life of
19 the matter, which my going in assumption was
20 about three years, I figured three associates
21 and two partners would work about a month each
22 in lawyer hours on that task. And for the
23 hourly -- for a month -- excuse me. I'm
24 trying to get that out correctly. The number
25 of hours in a month, the assumption I was

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2 using was 150, which I believe to be fairly
3 conservative.

4 Most hard-charging lawyers in the
5 commercial litigation space and complex
6 matters like this typically work more than
7 150 hours a month, but I was trying to be
8 conservative and I assumed maybe they'll work
9 on other things and so forth and so on. But
10 that was my overarching assumption. When I
11 made estimates based on people working a
12 month, I used 150 hours. When I made an
13 assumption based on them working just a week,
14 I used a 40-hour week. I appreciate the 40
15 times 4.3 does not equal 150, but I -- this is
16 the analysis I did.

17 So you see I assumed over the life
18 of the matter three associates would spend
19 about a month's worth of time and two partners
20 would spend about a month's worth of time.
21 That could be four partners spending a half a
22 month each, but that's the estimates I used.

23 My assumption too is that this -- a
24 lot of this in this first category will be
25 front loading, but it's not limited to the

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2 front -- the early stage of the case. So I
3 added up the hours. I did the multiplication
4 by the weighted blended hourly rate that I
5 used and I came up with these numbers.

6 Q. But I understand how you're saying
7 you did it, but -- so the lower reasonable
8 range is 750, higher reasonable range 1500,
9 right?

10 A. Correct.

11 Q. Why not 500 hours for the lower
12 range and a thousand hours for the higher
13 range?

14 A. Using my experience and judgment as
15 to what I thought would be the likely number
16 of hours and amount of time and if I -- I also
17 consulted -- you'll see in the report there's
18 a chart of the lawyers and rates that I was
19 assumed would work the matter. And so based
20 on those numbers, I used the number of
21 associates and partners available and made my
22 estimate.

23 Q. Now, when you talk about fact
24 investigation, all right, that's the first
25 line item where you attribute anywhere from

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2 750 to 1500 hours, right?

3 A. Yes.

4 Q. Do you have an understanding one
5 way or the other whether Reed Smith has
6 already conducted fact investigation with
7 respect to the actions?

8 A. I don't know one way or the other.

9 Q. Did you ask?

10 A. I did not.

11 Q. Did you ask how much -- so you have
12 no idea whether or how much time Reed Smith
13 spent on fact investigation for the actions to
14 date, correct?

15 A. Correct.

16 Q. I'm going to ask the same question.
17 Do you have a line item analysis strategy? Do
18 you see that?

19 A. I do.

20 Q. And you attribute anywhere from 360
21 to 600 hours, low and high estimates, right?

22 A. Correct.

23 Q. Do you have any idea how much time
24 Reed Smith has spent to date on
25 analysis/strategy with respect to the actions?

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2 A. It wasn't part of what I was asked
3 to do, so the answer's no.

4 Q. And you never asked?

5 A. I did not. It wasn't part of what
6 I was asked to do.

7 Q. Why do you say it wasn't part of
8 what you were asked to do?

9 A. Because it wasn't part of what I
10 was asked to do. I was asked to evaluate what
11 a reasonable range of defense costs would be
12 for the actions, and so that's what I set
13 about doing. I wasn't asked to evaluate
14 whether all the work had already been done or
15 would be done.

16 Q. It wasn't relevant to your --

17 A. It was not relevant to what I was
18 asked to do.

19 Q. And it wasn't relevant to what you
20 did do, right?

21 A. Correct.

22 Q. I'm not finding it here, but
23 somewhere you talk about four experts per
24 side?

25 A. Yes.

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2 Q. What's your basis for estimating
3 that there would be four experts per side?

4 A. It was an assumption that was given
5 to me. I think I say that in the report.

6 Q. I think you do.

7 A. I was asked to assume it was four.

8 Q. Who gave you that?

9 A. Reed Smith.

10 Q. Who at Reed Smith?

11 A. I don't specifically recall the
12 lawyer, which lawyer.

13 Q. Did you ask, well, what topics are
14 these four experts per side going to cover?

15 A. That was included in the
16 assumptions given to me.

17 Q. Well, what topics?

18 A. What were they? One was financial
19 expert for damages. Another was an expert on
20 indenture trustee administration. Another was
21 on the rights and obligations of indenture
22 trustees. Basically one is mechanics on how
23 they operate and the other is what they
24 actually -- what indenture trustees are
25 required and prohibited from doing. And then

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a fourth was sort of an unknown on the assumption that there will be some issue that could come up that people haven't foreseen at the outset, so we may have to leave room for an expert. Whether that's because one of the other litigants has an expert on the topic that now Bank of New York Mellon has to address or some -- an issue comes up.

Q. Do you know one way or the other whether Reed Smith has already retained and begun working with any of these experts?

A. I do not know.

Q. Did you ask?

A. I did not ask.

Q. Because it wasn't relevant to your declaration?

A. Correct.

Q. Paragraph 64 of your declaration. It's the last sentence. You state -- are you there?

A. I am.

Q. "Counsel will need to conduct a series of interviews and meetings and to collect, preserve and review documents to

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2 determine facts in the perspective of the
3 client and others." Do you see that?

4 A. I do.

5 Q. What series of interviews do you
6 have in mind?

7 A. Fact witness interviews. That's
8 what that's -- that's what I mean by that.

9 Q. How many? How many are you
10 assuming?

11 A. I don't have a specific number that
12 I assumed.

13 Q. Do you give a specific number to
14 this -- to the conducting interviews and
15 meetings and collecting, preserving and
16 reviewing documents?

17 A. No. I -- the format of Exhibit D,
18 I think, right? Well, what's marked as
19 Goldberg 2.

20 Q. Um-hum.

21 A. It comes from the AVA format for
22 different categories for evaluating cases and
23 case costs and budgeting. So I was -- I
24 budgeted and I analyzed what I thought the
25 fact investigation would entail by a number of

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2 hours.

3 In the body of the report, I then,
4 for the benefit of the Court, just ascribed
5 what it would be included in the various
6 components, what would be included in fact
7 investigation and what would be included in
8 the analysis and strategy, what are the types
9 of things that lawyers do and law firms do
10 under those headings.

11 So that is how it's laid out. I
12 did not say there's going to be "X" number of
13 fact witnesses in the case that need to be
14 interviewed as part of the fact investigation
15 piece and then do it that way. I did it in
16 the reverse order.

17 Q. But you don't have an understanding
18 I take it as to whether or not Bank of New
19 York's counsel has already conducted a series
20 of interviews as part of the fact
21 investigation in this matter, right?

22 A. I don't know one way or the other.

23 Q. And you never asked, right?

24 A. And I did not ask.

25 Q. And the same question, do you have

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2 any idea the extent to which Bank of
3 New York's counsel has collected, preserved
4 and reviewed documents already?

5 A. It wasn't part of the work I was
6 asked to do and I do not know.

7 Q. So you have no idea whether Bank of
8 New York has already collected, preserved and
9 reviewed all documents that its counsel deemed
10 relevant to the actions, right?

11 A. I wasn't part of the work I was
12 asked to do. I do not know one way or the
13 other.

14 Q. And you have no idea what documents
15 still remain to be collected, preserved and
16 reviewed in connection with the actions,
17 right?

18 A. You mean in actuality, what --

19 Q. Yes.

20 A. -- has been reviewed versus what
21 needs to be reviewed; is that basically your
22 question?

23 Q. My question is, do you have any
24 idea what documents still remain to be
25 collected, preserved and reviewed in

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2 connection with the actions?

3 A. It wasn't part of the work I was
4 asked to perform. I do not know.

5 Q. Can you look at your Goldberg
6 Exhibit 2. I'm looking at motion to dismiss
7 now. Am I reading this correctly that you
8 are -- your lower reasonable estimate for a
9 motion to dismiss is \$1,463,200 and your
10 higher reasonable estimate is 1,816,000. Am I
11 reading that correct?

12 A. You are.

13 Q. And the lower reasonable estimate
14 of hours is 1829?

15 A. You are, yes. Sorry. Yes, it is.

16 Q. And the higher reasonable estimate
17 is 2270 hours?

18 A. Correct.

19 Q. Okay. How did you arrive at that
20 estimate?

21 A. I figured that in the ordinary
22 course in commercial litigation, parties
23 typically get some form of extension before
24 they answer and the parties tend to negotiate
25 a briefing schedule. So I figured from the

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2 time that the Amended Complaint comes in,
3 roughly I figured that the motion to dismiss
4 would be due in about six weeks give or take.
5 Maybe that number is eight weeks, maybe it's
6 seven weeks, but I was thinking it would be
7 about six weeks give or take.

8 If you figure that you've got four
9 associates -- excuse me, two associates,
10 right? Bear with me a second. Yes, I figured
11 somewhere between three and five associates
12 working for about six weeks full time -- I
13 have that wrong. I apologize. That's why I'm
14 looking at this. Sorry. I just confused on a
15 number.

16 Q. Well, is your assumption set out in
17 Exhibit D? I don't want you to have to just
18 read it.

19 A. No, I'm not reading it. It is set
20 out, but there's something that is not in
21 there, which is the -- bear with me one
22 second, I apologize.

23 Yeah, I figured two associates
24 working roughly full time for about six weeks
25 on a motion to dismiss would be about

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2 480 hours. I figured they wouldn't work
3 about -- they wouldn't work the full 480 hours
4 either because at least some of the issues
5 from the 2017 alleged events of default might
6 have already been briefed, at least on some
7 level. And some of the briefing could be
8 reutilized or repurposed. And so that's why I
9 used 450 hours. So I had two associates
10 working on this for about six weeks to put
11 together the motion to dismiss.

12 Q. You mean if it hadn't been for the
13 summary judgment motions in the interpleader
14 actions, it would have been a higher number?

15 A. Well, two associates at 40 hours a
16 week for six weeks is 480 hours. I used 450
17 hours.

18 Q. So you cut it down 30 hours because
19 of what happened --

20 A. In part. It wasn't -- in part.

21 Q. Well, I'm sorry. I interrupted.

22 A. That's okay. And then I have 120
23 partner hours, which is roughly three weeks of
24 partner time figuring associates will spend
25 roughly twice as much as the partners on a

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motion to dismiss.

Then I simply took half that for the reply, as you can see. I just have the amounts for the reply. And then I have listed for the oral argument. And then a significant input to this, especially if one or both of these actions end up going forward in state court in New York with interlocutory appeals, there were always appeals for motions to dismiss no matter which way it goes. And so I included in my motion to dismiss number the appeal.

What I didn't include in -- certainly not in the low range, I just increased the numbers on the high range, but another thing just to factor into -- this doesn't get applied here mathematically, it's just sort of an overlay -- if -- there's always the possibility that a party repleads either because the Court in response to a motion to dismiss allows the party to replead and then it does or depending on the results of an appeal, there is a repleading and then a second round of motion practice on that -- on

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2 that amended pleading. That's not really
3 factored into here, but it's an overlay and it
4 gave me some modicum of comfort that my
5 numbers were not excessive.

6 Q. Okay. I'm curious about your
7 reduction of the 480 associate hours to 450
8 hours based on the work that was done in the
9 interpleader. And you explained the lower
10 range, you did that. Did you do that at the
11 higher range too?

12 A. I think probably not in the same
13 proportion.

14 Q. You mean a lesser proportion?

15 A. I think I just basically add
16 roughly 25 percent to what I thought the low
17 range would be in this instance,
18 approximately.

19 Q. That's how you got --

20 A. That's how I got from the --

21 Q. From the low to the high?

22 A. Yeah.

23 Q. You just mathematically
24 added 25 percent?

25 A. I think the range -- I think that

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2 there are other areas. You'll see the ranges
3 from low to high are greater than they are in
4 the motion to dismiss.

5 Q. I noticed that.

6 A. Because I think the range of
7 unforeseen instances or the range of variables
8 for a pre-answer motion to dismiss are less
9 than they are in other aspects of litigation.

10 Q. Well, let's focus on -- so if I'm
11 hearing you correctly, and tell me if I'm
12 hearing you wrong, you do believe that it's
13 appropriate to reduce your estimate, at least
14 for the motion to dismiss hours, based on work
15 that has been done already in the interpleader
16 summary judgment context; is that a fair
17 statement?

18 A. The way I would word it is, I think
19 it would be reasonable for defense counsel not
20 to duplicate work that has already been done.
21 But motion to dismiss claims that were not at
22 issue in the interpleader action are not the
23 same as claims that were at issue -- a summary
24 judgment motion that was at issue in the
25 interpleader action.

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2 The legal standard for a pre-answer
3 motion is different. The claims are
4 different. The alleged events of default are
5 different. It's a different motion. It
6 doesn't mean some aspects of what was briefed
7 in the interpleader action couldn't be, as I
8 said before, repurposed. But it's not --
9 certainly not a one for one.

10 Q. Well, you do understand that in the
11 interpleader action -- well, let me withdraw
12 that.

13 Do you have an understanding one
14 way or the other whether in the interpleader
15 summary judgment motions Bank of New York
16 offered various legal defenses that could also
17 be used in a motion to dismiss context?

18 A. I'm not specifically aware one way
19 or the other.

20 Q. Did you bother to try to determine
21 one way or the other whether that was the
22 case?

23 A. It wasn't part of the assignment
24 that I was asked to perform, no.

25 Q. I mean, do you have an

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2 understanding one way or the other whether
3 certain of the defenses that -- certain of the
4 legal defenses that BNY interposed in the
5 interpleader summary judgment defense would
6 apply across the board to all of the events of
7 default that are alleged in the actions?

8 A. I don't have -- I don't know one
9 way or the other.

10 Q. I've just been handed a note that
11 you stated that -- one of your prior answers,
12 that the reduction of 30 from 480 to 450 was
13 in part due to interpleader work. Is that --

14 A. Yes.

15 Q. What else was it due to?

16 A. My assumption is that the -- when I
17 did the math, that came to 480. That is on
18 the assumption that the associates were
19 working full time on the motion to dismiss
20 over that entire period of time. That's what
21 480 times 40 times six would be. They may not
22 have worked full time on the motion to
23 dismiss.

24 Q. So of the 30 hours that you're
25 haircutting, how much was for work that was

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2 already done on the summary judgment motions
3 in the interpleader action versus what you
4 just explained?

5 A. I didn't delineate it in that way.

6 Q. In your opinion, what work beyond
7 what has already been done in connection with
8 the interpleader summary judgment pleadings
9 would have to be done in connection with the
10 motion to dismiss?

11 A. I didn't evaluate that specifically
12 in my report. If you're asking me now what I
13 think would be the case, I'm happy to give you
14 my view, yes.

15 Q. Yes. Well, first of all, why
16 didn't you evaluate it in your report?

17 A. It wasn't part of what I was asked
18 to do and it wasn't necessary to me to -- if
19 someone asked me what I think it'll cost to
20 litigate a motion to dismiss, one of the
21 inputs that I need to do that is not what one
22 particular law firm did on a summary judgment
23 motion in a different case. It's just not one
24 of the inputs I would think of.

25 Q. Even if the same law firm who

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2 worked on the prior summary judgment case was
3 the law firm handling the motion to dismiss?

4 A. Not necessarily. I mean, I'm sure
5 the same law firm has done other motions to
6 dismiss too, and I'm sure that in other cases,
7 no, it's not. It's not how I look at it.

8 When clients come to me or my partners come to
9 me and say how much do you think it would cost
10 to litigate a certain motion, the thing I do
11 not do is run out into the marketplace to see
12 what every other law firm has ever done on
13 other kinds of motions in different cases.

14 Q. But don't you -- if someone comes
15 to you and says how much will it cost to
16 litigate a particular motion, wouldn't you be
17 curious as to whether the firm litigating the
18 particular motion had already done a body of
19 work that was relevant to that motion?

20 A. I'm not sure I understand the
21 question the way you phrased it. I apologize.

22 Q. Let's just take a hypothetical.
23 You're asked how much should firm A charge for
24 litigating a motion to dismiss, right?

25 A. Just to be clear --

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2 Q. And would you ask yourself, well,
3 has firm A ever in the past year or so
4 litigated a motion that was very similar and
5 had very many of the same issues that the
6 motion to dismiss will have?

7 A. So a couple of things. The way you
8 phrased that question is not the assignment I
9 was asked here in a qualitatively different
10 way. Your question now is, what should firm A
11 charge for a motion to dismiss. I was not
12 asked to perform any analysis like that. I
13 was asked what's a reasonable range of defense
14 costs, which is not the same as what should a
15 firm charge. Those are two different
16 questions.

17 But I think if -- surely a firm
18 that has more experience and more expertise in
19 a certain area will be able to handle a motion
20 more efficiently than one that does not. I
21 think that's basically a truism. But that
22 doesn't impact what I believe to be a
23 reasonable range of in the market what it
24 would cost to litigate a motion to dismiss.

25 Q. I understand. And I'm not trying

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2 to argue with you, but I'm not -- I'm not
3 talking about a situation where you have a
4 firm that has more experience or more
5 expertise in a certain area. I'm talking
6 about a firm who actually has litigated the
7 very issues that are at stake in the motion
8 for which you are trying to estimate
9 reasonable legal fees.

10 A. What's the question?

11 Q. Doesn't that make a difference?

12 A. On some level, perhaps, but it
13 wasn't part of what I was asked to do.

14 Q. So just to be clear, does your
15 estimate for legal fees relating to the
16 motions to dismiss the actions take into
17 account all of the research, analysis and
18 drafting that has already been conducted in
19 connection with the interpleader summary
20 judgment motions?

21 A. On some level it is baked in, but I
22 believe just the nature -- the way you asked
23 the question, that you overstate the amount of
24 overlap. But to the extent I believe there
25 was overlap, yes, I baked that in.

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2 Q. Well, how did you bake it in again?
3 By reducing -- by 30 hours?

4 A. Yes. That's roughly a week's worth
5 of lawyer time. That's not a significant
6 amount of time.

7 Q. And you say you baked it in, but
8 you're really not aware of the extent of the
9 research, analysis and drafting that Bank of
10 New York Mellon's lawyers have already
11 conducted in connection with the interpleader
12 summary judgment motions; isn't that true?

13 A. It wasn't part of what I was asked
14 to evaluate, so correct, I don't know.

15 Q. Can you go to paragraph 68, please.
16 I'm looking at the second sentence
17 specifically.

18 You say "For example, I've been
19 asked to assume that the anticipated
20 litigation might present complex choice of law
21 questions."

22 Who asked you to assume that?

23 A. The lawyers at Reed Smith.

24 Q. Did they explain to you what those
25 complex choice of law questions were?

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2 A. At a high level, yes.

3 Q. What was explained to you?

4 A. Basically as written in
5 paragraph 68 here, that there was some issues
6 as to where the holders were, where they
7 bought their bonds, what implications that
8 might have on some damages analyses.

9 Q. Do you have a view whether that
10 would have an implication on choice of law?

11 A. I don't, but I have a view as to --
12 I do have a view that it would be reasonable
13 to look at the question to see if it does. I
14 don't know the answer as to whether it, in
15 fact, does.

16 Q. Do you have an understanding one
17 way or the other whether Bank of New York in a
18 summary judgment brief in the interpleader
19 action stated that New York law applies?

20 A. My understanding is that -- this is
21 my understanding, is that New York law applies
22 to the transaction documents, but it may or
23 may not apply to some of the claims that your
24 clients are bringing or some of the related
25 issues. So those are questions to be asked.

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2 I'm not offering an opinion as to whether a
3 different law applies. I'm simply stating
4 that it's not unreasonable to evaluate that.

5 Q. Do you know whether at all in the
6 interpleader summary judgment motions choice
7 of law was a contested issue?

8 A. I don't know.

9 Q. And you didn't ask, right?

10 A. I did not ask.

11 Q. Go back to Goldberg 2, please.

12 A. Yes, sir.

13 Q. You don't have to call me sir.

14 You have a lower reasonable
15 estimate of 290 hours for the answer and 410
16 as the higher reasonable estimate. Do you see
17 that?

18 A. That's what the exhibit says, yes.

19 Q. Have you ever worked on a case
20 where the answer required a range of 290 to
21 410 hours?

22 A. I would say that's a reasonable
23 range for probably all of the cases on which I
24 worked on where an answer needed to be
25 prepared, all the answers in complex

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2 commercial cases.

3 Q. Paragraph 97, please.

4 Now in paragraph 97, second line,
5 you estimate for discovery 13,000 to 20,000
6 hours at -- and that would translate to eight
7 and a quarter million to 12 and three quarter
8 million?

9 A. Approximately, yes.

10 Q. How did you arrive at those hourly
11 estimates?

12 A. If you look at Goldberg Exhibit 2,
13 you'll see one of the headings is "Discovery."

14 Q. I see that.

15 A. And if you go and add up -- I see
16 it's not totaled here for you.

17 Q. I think it is.

18 A. For "Discovery"?

19 Q. It may not be.

20 A. I don't think this one is totaled
21 for some reason. I apologize. I believe if
22 you add up the sums, you'll come up to these
23 numbers.

24 Q. I think it is on the second page.

25 A. The dollars are, but the hours are

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2 not.

3 Q. Got it. Okay. Good.

4 How did you arrive at the partner
5 associate breakdown for that?

6 A. For the entirety of the discovery?

7 Q. Yes.

8 A. You'd have to do it.

9 Q. Issue by issue?

10 A. Yes, subheading by subheading.

11 Q. What's your understanding of the
12 extent of discovery that's already been
13 conducted in the interpleader litigation?

14 A. Nothing beyond what I've already
15 told you before, which is that I understand
16 there was document discovery and that's it,
17 and that there were not depositions. In fact,
18 maybe that the document discovery wasn't
19 entirely completed I think, maybe, because of
20 something having to do with Hurricane Maria,
21 but I might not have that exactly precise.

22 Q. Well, you understand, do you not,
23 that Bank of New York's position in the
24 summary judgment pleadings was that enough
25 discovery had been conducted to allow Bank of

1 DANIEL P. GOLDBERG (1/10/19)

2 New York to move for summary judgment, right?

3 A. I don't know if I have that
4 understanding one way or the other. I
5 understand there was discovery, I understand
6 there's motions for summary judgment. Your
7 question was that Bank of New York had the
8 view that it had enough discovery. I don't
9 know that one way or the other. For all I
10 know they wanted a lot more and the Court told
11 them no you can't have it, so they made the
12 best of the circumstance. I just don't know
13 one way or the other what their view was on
14 that topic.

15 Q. Well, we talked about earlier in
16 connection with the motion to dismiss, I
17 think, that you gave a haircut of 30 hours for
18 work that had already been done, right?

19 A. Approximately.

20 Q. Approximately. Not counting, you
21 know, the associates having to work on other
22 matters.

23 Did you do a similar exercise with
24 respect to your estimates for discovery?

25 A. No, I did it a little bit

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2 differently, as I explained before. I looked
3 at discovery -- again, this really only
4 applies to the document production piece. My
5 understanding is that there would've been no
6 overlap for things outside -- discovery
7 related outside the document production
8 because there weren't depositions in the
9 interpleader action and so forth.

10 The way I did it was, I looked at
11 what I understood the issues to be in the time
12 frame to be and did an estimate as to how long
13 I thought it would take lawyers to review the
14 documents for those issues. And that's how I
15 did it.

16 Q. Well, did you exclude in your
17 estimate -- in your declaration any work
18 reviewing documents for 2017?

19 A. We discussed this before. The
20 report doesn't say that expressly, but that's
21 basically how I came up with the estimates.

22 Q. You mentioned depositions. Go to
23 page -- not page. Go to paragraph 111.

24 A. I'm there.

25 Q. You say "I have been asked to

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2 assume there will be 40 fact depositions
3 roughly, ten for each Plaintiff, the Defendant
4 and third parties."

5 All right. Who asked to you assume
6 that?

7 A. Reed Smith.

8 Q. Did you ask what particular
9 deponent they had in mind?

10 A. I did not ask the names of the
11 deponents, no. I thought the numbers -- I
12 thought the number was not unreasonable in
13 light of the federal rules and just general
14 practice for complex lawyer commercial
15 multi-party litigation. But beyond that,
16 beyond them giving me the assumption and me
17 sort of gut checking as to whether I thought
18 it was in the range of reasonableness, beyond
19 that I did not evaluate the specifics of
20 deposition.

21 Q. In your experience in litigating a
22 complex trustee case, right, would you expect
23 there to be a significant number of
24 depositions prior to the summary judgment
25 motions?

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2 A. Apologies for answering your
3 question with a question.

4 Q. That's okay.

5 A. Do you mean post discovery summary
6 judgment motions, like the prototypical 56
7 motion that happens at the close of discovery?

8 Q. Yes, yes, yes.

9 A. Then you would think all the
10 depositions --

11 Q. All the deposition would have been
12 taken, right?

13 You are aware, are you not, that in
14 the interpleader action Bank of New York moved
15 for summary judgment -- and I'm sure your
16 counsel will correct me if I'm wrong --
17 without taking a single deposition?

18 A. My understanding is that there were
19 summary judgment motions in that matter and
20 there were no depositions. Why that took
21 place, I don't know. I'm not privy to that.

22 Q. Did you ask?

23 A. I did not ask.

24 Q. Did you ask Reed Smith -- well,
25 since you didn't feel the need to have any

1 DANIEL P. GOLDBERG (1/10/19)

2 depositions taken in connection with moving
3 for summary judgment in the interpleader
4 action, why are you assuming there are going
5 to be 40 depositions in defense of the
6 actions?

7 A. We did not have discussions about
8 that issue, but they are entirely different
9 cases. The case that I've been asked to
10 evaluate is likely to be fact specific and
11 fact intensive. So it wouldn't surprise me at
12 all if it -- I didn't do this analysis, but I
13 would not find it surprising if an
14 interpleader action fundamentally based on
15 contract had a very different scope of
16 discovery than a fraud and intentional
17 malfeasance case by noteholders against the
18 indenture trustee. I wouldn't be surprised if
19 the scopes were entirely different.

20 Q. Well, as far the 2017 events of
21 default, right, which are at issue in the
22 interpleader and/or at issue in the actions,
23 what's the difference between the issues?

24 A. Well, the issues -- there could be
25 many differences. The overlap, as I

1 DANIEL P. GOLDBERG (1/10/19)

2 understand it, is whether there were events of
3 default in 2017. But that's not the end of
4 the inquiry as to whether the trustee is
5 liable for anything because of that or not.

6 Q. Well, right, but the -- you're
7 aware -- well, maybe you're not aware. Are
8 you aware one way or the other whether the
9 interpleader summary judgment motions not only
10 discussed whether the events that happened in
11 2017 were, quote/unquote, events of default
12 under the resolution, but also whether Bank of
13 New York had defenses to the claims that
14 Whitebox and Ambac were making against them?

15 A. I don't have that specific of an
16 understanding as you just described it, but I
17 can say that the cases, the actions that
18 you're going to be litigating or that your
19 clients are going to be litigating, as I
20 understand it, require them to prove that Bank
21 of New York acted with some form of
22 intentional misconduct. Gross negligence I
23 understand is -- may or may not rise to the
24 level of intentional misconduct.

25 But that's a very different

1 DANIEL P. GOLDBERG (1/10/19)

2 standard and rubric than -- than what I
3 understand to be the legal standards governing
4 what happened in the interpleader action. So,
5 again, I'm not surprised that the scope of the
6 discovery in these cases could be quite
7 different.

8 The specific answer to your
9 question is, I didn't have those discussions
10 and didn't ask about that level of specificity
11 that you indicated in your question about the
12 summary judgment motion.

13 Q. I can show you the document I'm
14 referring to if you want, but I'm going to
15 represent to you that in Bank of New York's
16 opening summary judgment brief in the
17 interpleader litigation Bank of New York on
18 contended that, quote, "The material facts are
19 not in genuine dispute. Rather, the parties
20 disagree on the application of the law to the
21 resolution and other undisputed facts.
22 Consequently, the issues addressed in this
23 motion are right for summary judgment."

24 You're not familiar with that
25 language because you didn't read the -- you

1 DANIEL P. GOLDBERG (1/10/19)

2 don't remember reading the summary judgment
3 motion by BNY, correct?

4 A. I may have read it or I may have
5 read parts of it. I just can't recall the
6 specifics as I sit here, so I may or may not
7 have. I don't specifically recall the passage
8 you just read. However, that is -- in sum,
9 that is a sentence that appears in every
10 summary judgment motion I've ever seen. The
11 material facts --

12 Q. Right.

13 A. Genuine dispute of material fact is
14 the standard for the motion.

15 Q. But surely Bank of New York's
16 counsel would not have made that statement if
17 they didn't believe it to be true, would they?

18 A. Presumably not.

19 Q. Are you aware that recently within
20 the last months or two Bank of New York has
21 moved Judge Swain to decide its summary
22 judgment motion in the interpleader
23 litigation?

24 MR. SOLOMON: Would you accept

25 "reinstate"?

1 DANIEL P. GOLDBERG (1/10/19)

2 Q. Are you aware as recently as a
3 month or two ago Bank of New York has moved
4 Judge Swain to reinstate its summary judgment
5 motion in the interpleader litigation?

6 A. No.

7 Q. Pardon?

8 A. No.

9 Q. You're not aware of that?

10 A. No.

11 Q. No one told you that?

12 A. No one told me that.

13 Q. And so I take it you're not aware
14 that in --

15 A. Sorry. I'm aware that the
16 resolu- -- that there's an agreement,
17 basically a settlement, that came out of a
18 mediation that resolves the summary judgment
19 motions. I don't know one way or the other
20 whether that predates or happened after what
21 you're now telling me was a request to
22 reinstate summary judgment motions. I don't
23 know the -- I say that only because it's
24 possible. Maybe it's possible that somebody
25 told me that that interpleader -- summary

1 DANIEL P. GOLDBERG (1/10/19)

2 judgment motion in the interpleader action was
3 still a plan until very recently, but I could
4 have that wrong.

5 Q. Well, are you aware that in
6 requesting that the Court reinstate the
7 summary judgment motion Bank of New York
8 argued that if the Court grants the
9 interpleader summary judgment motion on Bank
10 of New York's behalf, it would dispose of the
11 Whitebox and Ambac actions?

12 A. Certainly not.

13 Q. And you're not aware of that?

14 A. I'm not aware of that level of
15 specificity for sure.

16 Q. Paragraph 87.

17 In the first sentence of 87, you
18 state "In my experience, post discovery
19 summary judgment motions require massive
20 resources, both professional and financial,
21 and the costs associated with them can easily
22 be underestimated." Do you see that?

23 A. I do.

24 Q. That's your opinion, right?

25 A. It is.

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2 Q. And going to your Exhibit D, which
3 is Goldberg Exhibit 2, is it accurate that for
4 summary judgment, you estimate a lower
5 reasonable range of 2260 hours and a higher
6 reasonable estimate of 3580 hours?

7 A. Correct.

8 Q. And I see a description of how you
9 arrived at those hourly rates, correct?

10 A. As phrased you asked me what you
11 see.

12 Q. Yeah. I mean --

13 A. That information is laid out in
14 Goldberg Exhibit 2.

15 Q. You answered the question much
16 better than I asked it. Okay?

17 Now when you give these ranges, you
18 give the 2260 hours for summary judgment all
19 total as the lower end and 3580 for the high
20 end, I mean, could another expert who is
21 providing an opinion as to reasonable number
22 of hours for summary judgment in this
23 particular case, would it -- would it be
24 unreasonable to come up with 1500 hours for
25 the lower reasonable estimate and 2,000 hours

1 DANIEL P. GOLDBERG (1/10/19)

2 for the higher reasonable estimate?

3 A. I would have to see the specific
4 analysis of the hypothetical expert you
5 mentioned. I don't mean to suggest this is
6 the only range of costs that could possibly be
7 incurred on a summary judgment motion on that
8 matter. This is my estimation as to what I
9 believe to be a reasonable estimate as to what
10 it ought to cost.

11 Q. Well, that's what I was getting at.
12 This is your estimation of a reasonable
13 estimate, but you're not saying that any other
14 estimate would be necessarily unreasonable,
15 are you?

16 A. I'm not suggesting that this is the
17 only reasonable estimate ever to be made on
18 the planet. But if you want me to evaluate
19 something that somebody else thinks or
20 believes, I'm happy to do so. You just got
21 give me the information as to why somebody
22 would think instead of two months, it would
23 only be one month or a month and a half worth
24 of work.

25 Q. But that's not what you did here,

1 DANIEL P. GOLDBERG (1/10/19)

2 because you didn't ever try to find out what
3 Reed Smith actually believes is the reasonable
4 amount of hours to be spent on summary
5 judgment, right?

6 A. That's not the question you asked
7 me.

8 Q. I know, but it's the question I'm
9 asking you now.

10 A. All right. So did I figure out
11 what Reed Smith actually spent on their
12 summary judgment motion on the interpleader
13 action?

14 Q. No. Did you take any steps to try
15 to determine what Reed Smith today is
16 estimating it will charge Bank of New York in
17 filing a summary judgment motion in the
18 actions?

19 A. No.

20 Q. Again, we talked about haircutting
21 the motion to dismiss hours. Did you do
22 anything to reduce your estimate of hours to
23 be spent on summary judgment work for the
24 actions to take into account work that had
25 been done by Reed Smith in the interpleader

1 DANIEL P. GOLDBERG (1/10/19)

2 summary judgment actions?

3 A. No, I didn't think that would be
4 appropriate for this entry. The post
5 discovery judgment summary motion would happen
6 literally years later with a much more fulsome
7 record on different claims involving different
8 alleged events of default. There would not
9 be -- in my estimation, there would not be a
10 material savings in time spent to prepare the
11 summary judgment motion based on the motion
12 done in the interpleader action three years
13 earlier -- or two years earlier.

14 Q. You say different events of
15 default. You do realize that there's an
16 overlap between the events of default, right?

17 A. There are two overlapping, but
18 there are four that are not, so I think any
19 savings would be de minimus if even
20 perceptible.

21 Q. Even if the same defenses that Bank
22 of New York would interpose for the two 2017
23 events of default were the exact same defenses
24 they would interpose for the four previous
25 events of default?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. I don't believe that would change
3 the amount of time the lawyers would have to
4 spend to prepare the summary judgment papers.

5 Q. Can you go to paragraph 80, please.
6 I'm sorry, 83, my mistake.

7 In 83, the first sentence, you say
8 "In addition to responding to Ambac and
9 Whitebox fact allegations, I have been asked
10 to assume that Bank of New York Mellon might
11 assert counterclaims and third-party claims."

12 Who asked you to assume that?

13 A. Reed Smith.

14 Q. Did you do anything to try to
15 determine if that assumption was reasonable?

16 A. I don't know that if I did anything
17 in particular. Counterclaims and complex
18 commercial multi-party cases are common, so I
19 didn't think it to be -- on its face to be an
20 unreasonable assumption. I don't know that I
21 undertook any specific analysis to ascertain
22 whether Bank of New York Mellon had a factual
23 basis to assert counterclaims here.

24 Q. Let's stick with counterclaims for
25 a second. Do you understand one way the other

1 DANIEL P. GOLDBERG (1/10/19)

2 whether under the COFINA resolution Bank of
3 New York had a right to be indemnified for
4 counterclaims as opposed to the defense of its
5 claims against it?

6 A. I don't know if counterclaims are
7 specifically addressed in the transaction
8 documents. The way I think of counterclaims
9 in cases like this is that they are defensive
10 as opposed to offensive. I they're
11 denominated as counterclaims, but most often
12 they're used as a means to offset damages or
13 to parry certain claims.

14 And my -- my impression is that
15 whatever counterclaims there are, are not the
16 types of claims that in the absence of your
17 clients bringing these actions that Bank of
18 New York Mellon would pursue. I view them as
19 defensive in nature, at least that's the
20 impression -- that's the assumption I have
21 made in doing this analysis.

22 Q. Well, when you were told to assume
23 that there may be counterclaims against -- by
24 Bank of New York against Ambac and Whitebox,
25 did you ask what kind of counterclaims do you

1 DANIEL P. GOLDBERG (1/10/19)

2 have in mind?

3 A. No.

4 Q. Why not?

5 A. It was an assumption that was given
6 to me for the assignment. And on its face it
7 did not seem like an unreasonable assumption,
8 that in a matter like this, the parties -- the
9 Defendant might assert counterclaims. And so
10 I just took that assumption that I was given
11 at face value.

12 Again, part of my assignment was
13 not to evaluate whether they have good or
14 meritorious counterclaims. My assignment
15 focused on what it would cost to litigate.

16 Q. Do you have an understanding one
17 way or the other whether under the plan of
18 adjustment Ambac or Whitebox would be
19 responsible for legal fees relating to
20 counterclaims brought by Bank of New York
21 against them?

22 A. Not part of the assignment I was
23 asked to do. I had not evaluated that at all.
24 So I guess the shorter way to answer that
25 question would be to say I do not know.

1 DANIEL P. GOLDBERG (1/10/19)

2 Q. What specific third-party claims
3 are you assuming in your declaration?

4 A. I'm not assuming specific
5 third-party claims. I've been asked to assume
6 that generically there would be counterclaims
7 and/or third-party claims.

8 Q. But how can you do an estimate of
9 reasonable legal fees when you don't even ask
10 when -- when your -- let me withdraw.

11 How can you perform an estimate of
12 reasonable legal fees with respect to how much
13 expense Bank of New York would incur in
14 pursuing third-party claims when you don't
15 even know what third-party claims are being
16 contemplated?

17 A. There's no additional line item for
18 like discovery of counterclaims and
19 third-party claims. My assumption is that it
20 would be subsumed. So I don't know whether
21 we're dancing on the head of a pin focusing --
22 I appreciate -- I understand why you're
23 focusing on certain aspects of the report and
24 asking questions and I'm happy to answer all
25 your questions.

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2 But I was asked to assume there
3 were going to be counterclaims and third-party
4 claims and kind of bake that into what you
5 thought it would cost. And so the work I did
6 is what would a reasonable cost be to defend a
7 prototypical but complicated commercial -- a
8 multi-party commercial litigation. I do that
9 all the time. I suspect you do too. If a
10 client came to you and said I have a matter
11 and here are some generic high-level facts,
12 can you give me some range as to what it would
13 cost, I doubt you tell the client I refuse to
14 give you an answer until I undertake an
15 intense investigation into your claims. It's
16 something lawyers are asked to do and
17 something I've been asked to do a lot, which
18 is estimate what I believe a litigation will
19 cost at the outset before you know all the
20 details. It's not such an unusual request.

21 Q. I know, but you have -- you
22 specifically break out counterclaims and
23 third-party claims. And I'm just curious how
24 you could be --

25 A. Well -- finish your question.

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2 Q. No, I'm curious why you even
3 mention it. Let's just take third-party
4 claims. I'm curious why you even mention
5 third-party claims in your declaration if you
6 have no idea what third-party claims are
7 contemplated or even if Bank of New York has
8 released any -- all potential third-party
9 claims under the plan of adjustment?

10 A. You're taking issue with the
11 assumption that I was given. I understand why
12 you might be doing that. It was an assumption
13 I was given. You're asking me why did I use
14 the assumptions I was given. Because experts
15 use the assumptions they're given.

16 Q. But don't experts sometimes try to
17 inquire whether the assumptions they're given
18 are reasonable or are not reasonable?

19 A. Yes. And the inquiry that I engage
20 in on this specific issue is, is it reasonable
21 to assume that in a multi-party litigation
22 like this there will be counterclaims and
23 cross-claims or other third-party claims
24 somewhere in this case, and I think that's a
25 reasonable assumption in the context.

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2 I don't need to know the specifics
3 of what each and every claim for contribution
4 or indemnity or other cross-claim or
5 third-party claim might be to draw the
6 conclusion that it might be reasonable to
7 assume that some party might at some point try
8 to assert such a claim. That's the extent of
9 the assumption.

10 Q. Hypothetically speaking, let's just
11 take a hypothetical. If the plan of
12 adjustment provided that Bank of New York was
13 giving a release to any potential third-party
14 claims related to the actions, you wouldn't be
15 listing that as one of the components of
16 reasonable attorneys' fees, would you?

17 A. I'd like to read the question. I
18 don't know that I --

19 MR. SOLOMON: I'm going to -- for
20 the first time I'm going to object to
21 the form of the question because I
22 think it misstates his report.

23 Please go ahead.

24 A. I wasn't tasked with evaluating
25 whether Bank of New York or any other party

1 DANIEL P. GOLDBERG (1/10/19)

2 would have valid or meritorious counter- or
3 cross- or third-party claims. I was asked to
4 assume that they would make those claims and
5 thus they would get litigated and so what
6 would -- include that in the mix of
7 information that I was using to ascertain what
8 it would cost to litigate the case. That's
9 the extent of my analysis. Certainly nobody
10 said to me we're going to assert frivolous
11 claims, please price out what it would cost to
12 litigate that.

13 MR. MOSCATO: Can we take a break.

14 (Whereupon, at this time, a short
15 break was taken.)

16 BY MR. MOSCATO:

17 Q. Welcome back, Mr. Goldberg.

18 A. Thank you.

19 Q. Earlier this morning you gave one
20 example, and it was in the context of the
21 motion to dismiss where you recalled reducing
22 hours from your estimate based on work that
23 had been done in the interpleader action. Do
24 you recall that?

25 A. I do.

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2 Q. And that was -- you were saying
3 that in connection with the motion to dismiss,
4 you probably would have done 480 associate
5 hours for the briefing, but you reduced that
6 to 450 because some of the 30 hours was
7 because of work that had already been done in
8 the interpleader and some was for some other
9 reason, I don't remember.

10 Looking at Goldberg 2, Exhibit D of
11 your declaration, can you point out any other
12 time that you consciously reduced hours
13 because of what had been done in connection
14 with the interpleader litigation?

15 MR. SOLOMON: He doesn't have to
16 repeat -- he gave you a whole
17 discussion about the document
18 production. You don't need him to
19 repeat that, do?

20 MR. MOSCATO: Why not?

21 MR. SOLOMON: As you wish.

22 BY MR. MOSCATO:

23 Q. What I'm looking is, you were
24 pretty specific going from 480 to 450, and I'm
25 curious as to what some of these numbers might

1 DANIEL P. GOLDBERG (1/10/19)

2 have been if it had not been for the
3 interpleader litigation?

4 A. I think looking at the schedule, I
5 think the only two things that I had something
6 approaching something tangible would be the
7 pre-answer motion to dismiss and the document
8 production. Based on what I know in my
9 understanding of the circumstance, I don't
10 know that the interpleader action will have an
11 effect on the amount of time it will take to
12 litigate the cases otherwise.

13 Q. That's your view, I understand
14 that.

15 A. That's what I'm saying. That's why
16 it's not reflected anywhere as far as I can
17 tell and as far as I can recollect other than
18 those two areas.

19 Q. Well, you were able to come up with
20 a number of the reduction in the motion to
21 dismiss context. You may have done it
22 already, I might have missed it. Did you --
23 do you have a number that, for example, the
24 document production review would have been if
25 not for -- if the interpleader had not

1 DANIEL P. GOLDBERG (1/10/19)

2 occurred?

3 A. I don't want you to apply too much
4 precision to what I said about the -- or
5 applying too much precision can sometimes make
6 an answer inaccurate. I said six weeks at 40
7 hours a week with two associates is 480 hours.
8 I gave that a little bit of a haircut for a
9 number of reasons. One of which included the
10 fact that some of the pure straight-up legal
11 issues on a pre-answer motion might -- some of
12 that work that was done in the interpleader
13 action might translate. It wasn't intended to
14 be an hour-for-hour reduction. It wasn't
15 intended to be exclusive of anything else.

16 I believe you asked me of the 30,
17 how much went to the interpleader versus
18 others. And I told you I didn't break it up
19 that way. I just -- six weeks worth of work
20 at 40 hours a week is 480 hours, and I gave it
21 a little bit of a haircut is how I did that
22 analysis.

23 On the document production, I think
24 I explained that I did that a little
25 differently. I didn't take the entirety of

1 DANIEL P. GOLDBERG (1/10/19)

2 what every -- the whole document production
3 would be and then subtract out what I thought
4 was applicable to the production that happened
5 in the interpleader. It was -- the other way
6 is I looked at what I believed the production
7 would be with respect to the four alleged
8 events of default that were not at issue and
9 just generically issues that may not have been
10 covered and figured out what I thought that
11 kind of a production would look like. And
12 that's where I came up with the estimates that
13 you see in the report.

14 Q. But just to be clear, you don't
15 explain that in your declaration, do you?

16 A. Not in that level of specificity.

17 Q. In any level of specificity?

18 A. Well, I do say that I took into
19 account -- let me look at the paragraph.
20 Paragraph 102 I address it. I just describe
21 for you the detail behind the -- what I'm
22 talking about in paragraph 102.

23 Q. Why do you refer to it as limited
24 discovery in the interpleader action?

25 A. That's what I was told.

1 DANIEL P. GOLDBERG (1/10/19)

2 MR. MOSCATO: I think I'll pass
3 the witness.

4 EXAMINATION BY

5 MR. WELCH:

6 Q. Good afternoon, Mr. Goldberg. How
7 are you doing?

8 A. I'm well, thank you. And yourself?

9 Q. I'm good. You seem to have a bit
10 of a cold today. Is that so?

11 A. It is.

12 Q. Are you taking any medication?

13 A. No.

14 Q. Is there any reason why --

15 A. Other than cough drops.

16 Q. Cough drops. Okay. I'll have one
17 too, just in solidarity.

18 Is there any reason why you can't
19 give your best testimony today?

20 A. None that I'm aware of.

21 Q. You and I have a prior connection,
22 right?

23 A. We do.

24 Q. What's the nature of that
25 connection?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. We both -- I used to work at your
3 current firm.

4 Q. Kasowitz Benson?

5 A. At the time, it was Kasowitz,
6 Benson, Torres & Friedman. I understand today
7 it's Kasowitz Benson Torres.

8 Q. And when's the last time we've
9 spoken?

10 A. I don't recall. A long time ago.

11 Q. So a long time ago.

12 And apart from this deposition
13 right here now, have we discussed this case at
14 all?

15 A. No.

16 Q. How did you come to be retained as
17 an expert in this case?

18 A. My firm was engaged by Reed Smith
19 to provide an opinion as to what the
20 reasonable range of defense costs would be for
21 the actions, as your colleague has defined
22 them. And from there we determined within the
23 firm that I would be the best person to
24 actually testify and provide the opinion.

25 Q. Have you or anyone in your firm

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2 been retained by Reed Smith before?

3 A. Not to my knowledge. Not that I
4 could -- certainly not that I can recollect.

5 Q. Have you or anyone in your firm
6 done any work for Bank of New York before?

7 A. Yes.

8 Q. And can you describe the nature of
9 that work?

10 A. In a prior matter we were
11 prosecuting a residential mortgage-backed
12 securities case, commonly known as a putback
13 case. And in one or maybe two of those cases
14 Bank of New York Mellon was the trustee.

15 Q. So Bank of New York -- I'm sorry.
16 Bank of New York Mellon was your client?

17 A. In name they were our client. The
18 way those matters tend to work is that the
19 directing holder instructs the trustee who to
20 hire. And in those instances like most, the
21 directing holder instructed the trustee to
22 hire our firm, but the trustee in those
23 matters was Bank of New York Mellon.

24 Q. And could the Bank of New York have
25 objected to you being hired?

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2 A. I believe they could have actually,
3 yes.

4 Q. And --

5 A. But I'm not 100 percent certain of
6 that. I'm sure if there was a reason or if we
7 had a conflict or if there was some basis to
8 be objectionable, I imagine they could have.
9 But I'd have to go back and look at the
10 operative pooling and servicing agreement to
11 see.

12 Q. Was this just one action we're
13 talking about?

14 A. My recollection is there might have
15 been two. There might have been two putback
16 cases.

17 Q. Two putback cases that your current
18 firm represented Bank of New York at?

19 A. Correct.

20 Q. Do you have a sense, a ballpark, of
21 how much money your firm made in that
22 representation?

23 A. I don't.

24 Q. Is that representation ongoing?

25 A. No.

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2 Q. Have you had any -- you or anyone
3 in your firm had any other representations of
4 Bank of New York?

5 A. Not to my knowledge.

6 Q. Do you anticipate representing Bank
7 of New York either directly or indirectly as
8 you've described?

9 A. No. As I say, we were engaged in
10 those other matters because we had the
11 relationship with the directing certificate
12 holder who instructed the bank to hire us. We
13 did not have the relationship directly with
14 the bank as the trustee.

15 Q. Do you have a relationship with
16 anybody at Bank of New York apart from your
17 work on this case?

18 A. On this case? You mean the one
19 that brings us here together today?

20 Q. Yes.

21 A. Not that I recall. I'm sure I know
22 someone over there, but not anything material
23 that comes to mind.

24 Q. Do you have any reason to believe
25 that you or your firm will get work from Bank

1 DANIEL P. GOLDBERG (1/10/19)

2 of New York going forward?

3 A. No. One way or the other, no.

4 Q. Have you been designated as an
5 expert before with respect to anticipated
6 legal fees?

7 A. No.

8 Q. This is the first time?

9 A. Yes.

10 Q. Have you been designated as an
11 expert in any capacity or concerning any
12 subject matter before?

13 A. You mean expert witness I assume,
14 right?

15 Q. Right?

16 A. No. The answer's no.

17 Q. Okay. And so have you testified
18 before?

19 A. Yes, but not as an expert.

20 Q. All right. Can you describe the
21 nature of the testimony, just very high level?

22 A. I have been -- so in one matter,
23 Kasowitz, when I was at Kasowitz, had a fee
24 dispute with a client on a matter I was
25 handling and the firm sued the client. And in

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2 that matter I was deposed. In another matter
3 at my current firm we obtained an award of
4 attorneys' fees, which was then referred to a
5 referee and I testified before the referee on
6 the reasonable amount of our firm's attorneys'
7 fees in connection with that fee shift. And
8 years and years ago I believe I testified in
9 Delaware Bankruptcy Court on something
10 unrelated to legal fees.

11 Q. All right. So apart from those
12 three occasions you just described, have you
13 testified in any other occasions?

14 A. I think those were four occasions,
15 but maybe there were three, three or four
16 occasions as best as I can recollect as I sit
17 here. I think that's it. It's possible
18 there's something I'm not remembering.

19 Q. I want to focus your attention on
20 the second one you mentioned, which was where
21 you testified concerning, in some respect,
22 legal fees at your current firm.

23 A. Okay.

24 Q. What was the caption of that case?

25 A. I don't recall specifically. The

1 DANIEL P. GOLDBERG (1/10/19)

2 name of our client was Progresso Ventures.

3 Q. Progresso Ventures was a named
4 party?

5 A. Yes, that's the plaintiff, and that
6 was our client.

7 Q. Where was the case pending?

8 A. New York Supreme.

9 Q. You testified in that matter?

10 A. I testified before a referee.

11 Q. Was there a transcript taken of the
12 testimony?

13 A. Presumably.

14 Q. Do you have a copy of that?

15 A. No.

16 Q. If you were to make your best
17 effort to obtain a copy of that transcript,
18 how would you go about it?

19 A. I would inquire of my partner who
20 was the lawyer litigating the fee aspect of it
21 and ask him if he was able -- if he were able
22 to get one.

23 Q. Can you elaborate a little more
24 about the subject matter of your testimony in
25 that case?

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2 A. Sure. It was a contractual dispute
3 that also had related business torts we under
4 the agreements were entitled to recover --
5 well, our client under the agreement was
6 entitled to recover its attorneys' fees. We
7 prevailed before Justice Ramos. He gave us an
8 award of attorneys' fees. He referred the
9 matter to a referee to set the amount of the
10 attorneys' fees. The referee scheduled a
11 hearing on a day. We showed up. I put the
12 legal bills into evidence and discussed what
13 we -- the work we did on the matter and the
14 referee ruled.

15 Q. Okay. What were the nature of the
16 claims? Or withdrawn.

17 I'm trying to ascertain whether
18 there's any sort of relationship or connection
19 between the types of claims at issue here and
20 the types of claims at issue there?

21 A. Not particularly. I mean, it was a
22 loan agreement. Our client entered into an
23 arrangement where it loaned money to an
24 investment firm that did not pay it back.
25 Rough and tough, that's what -- and they

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2 committed other frauds, but rough and tough,
3 that was the case. And so our claim that
4 pursuant to which we got attorneys' fees that
5 led to my testimony was under the applicable
6 loan agreement that our adversary had not
7 repaid our client, so got an award of summary
8 judgment for the amount owed, and the
9 documents allowed us to -- or our client to
10 recover attorneys' fees and that was it.

11 Q. Okay.

12 A. It wasn't the trustee, it wasn't
13 noteholders, it wasn't anything like that.

14 Q. Your current firm was founded in
15 2012; is that right?

16 A. Correct.

17 Q. Since that time, have you or your
18 firm been involved in bankruptcy matters?

19 A. Yes.

20 Q. Have you or your firm made fee
21 applications?

22 A. No, not to my knowledge. If it's
23 happened, it happened with my knowledge.

24 Q. So you consider yourself to be an
25 expert in the estimation of anticipated legal

1 DANIEL P. GOLDBERG (1/10/19)

2 fees?

3 A. Yes.

4 Q. And what in your view qualifies you
5 as an expert in that subject matter?

6 A. I've been a commercial litigator
7 for over 23 years. I've been a partner at
8 three commercial firms in New York. And as
9 part of my work, I've engaged in this exercise
10 literally countless times, more times than I
11 can count. And at my current firm for the
12 past seven years I'm the person responsible at
13 the firm for reviewing the firm's fee
14 arrangements. And as part of that process I
15 regularly go through the process of estimating
16 what a litigation will cost, both on an hourly
17 basis and sometimes that's done in connection
18 with alternative fee arrangements. But that's
19 irrelevant here. Evaluating what a litigation
20 will cost or providing budgets on an hourly
21 basis and I do it all the time, not just for
22 the matters for which I have primary
23 responsibility, but for the matters of the
24 firm generally.

25 Q. Okay. And so you have formulated

1 DANIEL P. GOLDBERG (1/10/19)

2 an opinion that your offering in this matter?

3 A. I am.

4 Q. At the highest level what's your
5 opinion?

6 A. I'm not sure I understand the
7 question, sir. You're asking what my
8 opinion -- at the highest level, you don't
9 mean the highest dollar amount? You mean at a
10 high level, describe what my opinion is?

11 Q. Yes.

12 A. My opinion is that a reasonable
13 range of defense costs for an indenture
14 trustee such as Bank of New York Mellon to
15 defend the actions, as your colleague has
16 defined them in this deposition, would be
17 within a range of about 25 million to about
18 \$40 million.

19 Q. That's a fairly significant range,
20 wouldn't you agree?

21 A. Commercial litigation is
22 significantly uncertain.

23 Q. You say you've done budgets
24 countless number of times. How many times
25 have you done a budget for \$40 million in

1 DANIEL P. GOLDBERG (1/10/19)

2 anticipated legal fees?

3 A. I don't know a specific number.
4 Several. I've done budgets several times
5 where the amount of the fee is as much as
6 \$40 million.

7 Q. Okay. And have you done matters
8 where the firm has actually recovered
9 \$40 million?

10 A. When you say "recovered," you mean
11 have I worked on matters when I -- the firm I
12 was working for has been paid \$40 million over
13 the life of -- sure.

14 Q. So have you had the opportunity to
15 compare the budgets that you've made with the
16 actual fees recovered at your firm over the
17 course of the six years you've been there?

18 A. It's happened from time to time.

19 Q. And how would you characterize the
20 accuracy of your budgets when compared to
21 actual billables?

22 A. Reasonably on target. If anything,
23 I might be prone to underestimate the costs,
24 but reasonably accurate.

25 Q. All right. I believe you said that

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2 you've been involved in several matters where
3 the fees at issue were 40 million or more; is
4 that correct?

5 A. Well, you asked have I worked on
6 matters where the firm has collected 40
7 million or more. The answer to that is yes.
8 What you just asked me is a little bit
9 different.

10 Q. Okay. Well, I want to understand
11 if you've personally formulated a budget where
12 the top end of the range was \$40 million for
13 anticipated legal fees?

14 A. Yes. I believe I said yes, I
15 believe I have.

16 Q. How many times?

17 A. I don't know. I don't know the
18 number specifically. Several.

19 Q. Is it a few, many? Can you
20 characterize it at all?

21 A. I wouldn't say many. I would
22 say -- I would not say many, but several. I
23 don't know exactly.

24 Q. Several?

25 A. I don't want to guess.

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2 Q. So two or three?

3 A. More than two or three. Fewer than
4 ten.

5 Q. Would you characterize a case with
6 a budget of \$40 million to be unusual in your
7 experience?

8 A. An upper range budget?

9 Q. Yes.

10 A. Or like in -- like in an actual
11 estimate, you will spend \$40 million or it
12 could be as much as \$40 million?

13 Q. The latter.

14 A. The latter. Is it unusual; that's
15 your question?

16 Q. Yes.

17 A. It's becoming less and less
18 unusual. I mean, spending -- it's hard to do
19 a meaningful multi-party commercial litigation
20 in New York that runs through discovery and
21 goes all the way through for less than
22 \$20 million by the time you're done if your at
23 a -- if you're at a firm that charges what
24 I'll characterize as Am Law 200 rates. It
25 just doesn't happen.

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2 A large case -- I'm not talking
3 about a single plaintiff, single defendant
4 small breach of contract case. I'm talking
5 about multi-party case with large documents,
6 legal issues, parties scattered and witnesses
7 around different jurisdictions, cases that
8 look like this case. So it's difficult to do
9 a case like that all the way through for less
10 than \$20 million.

11 So your question is, is it unusual
12 for the upper range to be 40? I think that's
13 becoming more and more common.

14 Q. In your experience, have you
15 actually seen it?

16 A. I've seen it several -- I've
17 estimated it several times and I've been
18 involved in matters where the firm's collected
19 \$40 million several times.

20 Q. You said that in your experience
21 20 million is not unusual?

22 A. Correct.

23 Q. And that's half of your upper
24 range, right?

25 A. Approximately.

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2 Q. In fact, it's \$5 million less than
3 your lower range here?

4 A. Correct.

5 Q. Can you describe -- do you recall
6 any of the specific cases that had an upper
7 estimated range of \$40 million or greater that
8 you were involved in budgeting?

9 A. The question is can I recall them?

10 Q. Yes. You said there were several.
11 Can you name one?

12 A. I could, but I won't for
13 confidentiality reasons.

14 Q. Do you recall them?

15 A. I recall a few, yes.

16 Q. Okay. If you recall them, then you
17 can number them, right? How many do you
18 recall?

19 A. I don't agree with your premise
20 because I can't recall them all. How many can
21 I recall?

22 MR. SOLOMON: Is this different
23 than the question you asked before
24 about more than two or three, less
25 than ten? If it's not different, then

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2 I'm not understanding it.

3 A. Three specifically that I can
4 recall.

5 Q. Okay. So you can recall three
6 occasions where the upper range of the
7 estimated legal fees was 40 million or
8 greater?

9 A. Correct.

10 Q. That's over the course of your
11 entire 23-year career as a -- including as a
12 partner at multiple commercial engagement
13 firms?

14 A. Correct. Those are the ones I can
15 recollect as I sit here today.

16 Q. And those three, did they -- any of
17 them relate to -- were they in any way similar
18 to the case that we have here?

19 A. As your question is framed, the
20 answer is yes.

21 Q. Because it's extremely broad. Fair
22 enough.

23 How about do any of those three
24 matters, do they involve a trustee, litigation
25 against a trustee for, you know, alleged

1 DANIEL P. GOLDBERG (1/10/19)

2 malfeasance?

3 A. You asked two questions there. One
4 of them concerns a trustee. It does not
5 concern claims against a trustee for
6 malfeasance.

7 Q. Okay. So none of the three that
8 you can recall where the upper range of the
9 anticipated legal fees was \$40 million
10 involved claims against a trustee for alleged
11 malfeasance?

12 A. Correct.

13 Q. Can you describe the -- what was
14 your methodology?

15 A. For what?

16 Q. Well, coming up with a range.

17 A. As I described to your colleague, I
18 went through, I started with the ABA model on
19 different facets and components of a
20 litigation, went through each one, estimated
21 how many hours different categories of lawyers
22 would spend on those different subparts,
23 developed a range between what I thought would
24 be on the lower side and a range on what I
25 thought would be on the higher side. I did

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2 that for each of the subcomponents of the ABA
3 model, added up those hours and multiplied
4 them by the blended hourly rate, weighted
5 blended hourly rate that I derived. That's
6 how I came up with the numbers.

7 Q. Okay. The ABA model components;
8 did I hear that right?

9 A. Yes.

10 Q. Were there any ABA model components
11 that you elected to exclude from your
12 analysis?

13 A. No, none that come to mind.
14 Certainly I made no conscious choice to
15 exclude something in particular.

16 Q. So your intent was to include them
17 all?

18 A. Maybe I don't understand your
19 question.

20 Q. Your intent was to include every
21 single component identified by the ABA as a
22 facet of litigation?

23 A. I think me and my team pulled this
24 model and we used this model. I'm not aware
25 of any specific component that we

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2 intentionally chose to omit, which is not to
3 say maybe there is some component that doesn't
4 show up here, but it wasn't intentional.

5 Q. Did you evaluate the components to
6 make an assessment of whether they -- they
7 made sense in this particular case?

8 A. Yes.

9 Q. And in your view, every single one
10 of them without exception made sense in this
11 case?

12 A. I think every one of these
13 components is related and relatable to a
14 commercial litigation. And I've certainly
15 done budgets and models where I have not used
16 the ABA model, but in particular because this
17 is an expert opinion to be relied upon by the
18 Court, I thought it prudent to use an accepted
19 ABA model, something that was recognizable
20 that I didn't just create on my own. And so
21 we used this model.

22 Q. You indicated that one of the steps
23 in your analysis was to estimate the hours for
24 each of these components?

25 A. Yes.

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2 Q. Can you describe for me how you
3 estimated the number of hours?

4 A. I used my experience and judgment
5 to estimate how many lawyers I thought would
6 be necessary for the various tasks and how
7 long I thought it would take them to perform
8 those tasks. And then generally speaking, I
9 estimated then in either work weeks or work
10 months on the same terms I described earlier
11 in the deposition.

12 Q. Okay. Did you rely on any academic
13 texts or treatises?

14 A. I did not.

15 Q. Did you rely on any generally
16 accepted methodology of some kind?

17 A. I'm unaware of a generally accepted
18 methodology for estimating how many hours it
19 will take a lawyer to perform a task on an
20 hourly basis.

21 Q. Apart from your experience, was
22 there any other basis for your assessment of
23 the estimated hours for each of the components
24 under the ABA model?

25 A. It's based on my judgment and

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2 experience.

3 Q. And nothing else?

4 A. Correct. No. Sorry. Not entirely
5 true.

6 That's how I derived the schedule
7 and number of hours. I did then instruct my
8 team to do a little bit of research just sort
9 of as a sanity check to see if there were
10 other cases out there and so forth that kind
11 of might have looked a little bit like this
12 one or at least complex commercial cases where
13 we could find publicly reported fees and fee
14 estimates and things like that. And so we did
15 that.

16 That gave me comfort that,
17 notwithstanding your kind questions here today
18 about how \$40 million sounds like a crazy
19 number, I found other cases where fee
20 applications were in excess of \$40 million for
21 comparable litigations and things.

22 Q. And all of that is set forth in
23 your report?

24 A. Certainly some of it is set forth
25 in my report. I'm trying to ascertain if

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2 there's something that we found that we
3 omitted. I don't think so.

4 Q. Well, did you come across any
5 examples, you or your team come across any
6 examples where there were significantly lower
7 numbers and you elected to exclude them from
8 your analysis report?

9 A. I'm sure there are cases in the
10 world where it costs less to litigate. We did
11 not find a comparable case where the numbers
12 were materially lower and omitted it.

13 Q. Okay. Who worked on -- Exhibit 1
14 is your declaration, right?

15 A. You're saying Exhibit 1? Yes, I
16 mean, the document that's entitled
17 "Declaration of Daniel P. Goldberg"?

18 Q. Yes.

19 A. That's my declaration.

20 Q. And this memorialize the opinion
21 that you're offering in this case?

22 A. It does, along with the exhibits.

23 Q. Okay. Did you intend to offer any
24 opinions outside the four corners of this
25 document?

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2 A. I intend to do what's asked of me
3 by counsel and the Court. My understanding at
4 the moment is that my opinions will be what's
5 contained in Exhibit 1.

6 Q. Okay. There was -- you were asked
7 a question -- and we may have to go back to
8 the transcript, but counsel asked you to
9 describe some aspect of your methodology and
10 you said, well, that's basically it, although
11 it's not expressly set forth in the opinion.
12 Do you recall that testimony?

13 A. Not sufficiently to be able to
14 answer whatever your next question is going to
15 be.

16 Q. Okay. Maybe it's worth going to
17 the record. I think it is an important
18 clarification anyway.

19 MR. WELCH: Can I ask the court
20 reporter to look for testimony using
21 the word "expressly."

22 (Whereupon, the referred to
23 question and answer was read back by
24 the Reporter.)

25 Q. Do you recall that question and

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2 that answer?

3 A. Generally, yes.

4 Q. Okay. It caught my attention
5 because I want to make sure that we have a
6 full understanding of the opinion you intend
7 to offer in this case. And that jumped out at
8 me because you suggested that it wasn't
9 expressly set forth in your report?

10 MR. SOLOMON: The witness has
11 answered questions at the deposition.
12 Those areas might be gone into at the
13 trial. We don't know. We're not
14 going to foreclose that if there was
15 discussion about it here at this
16 deposition.

17 Q. Is there anything else sitting here
18 right now that you intend to or believe you
19 will testify about that's not expressly set
20 forth in your expert report?

21 A. Your question I think has a false
22 presumption in it. I didn't testify earlier
23 in the -- that you had the reporter recite
24 wasn't an opinion that wasn't set forth in the
25 report. The opinion is in the report. The

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2 basis upon which I excluded document review
3 work related to the 2017 alleged events of
4 default, that methodology and the thinking in
5 my head for how I did it wasn't necessarily
6 set forth expressly, but the opinion is in the
7 report.

8 With that clarification, to my
9 knowledge, no, I'm not aware of any opinion
10 that I'm being asked to offer that's not
11 reflected in the report.

12 Q. Okay. Turning your attention to
13 Exhibit 1, which is your declaration, I want
14 to focus your attention to paragraph 2.

15 A. I'm there.

16 Q. For the record, the first sentence
17 in paragraph 2 reads "It's important to note
18 at the outset that litigation inherently is
19 uncertain and it is impossible to predict with
20 certainty what any given case will cost to
21 litigate when the lawyers are billing by the
22 hour, which is a standard method of billing
23 today." Did I read that correctly?

24 A. I believe you did.

25 Q. And that's your opinion?

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2 A. It is.

3 Q. And what do you mean by "inherently
4 is uncertain"?

5 A. The process is adversarial.
6 Lawyers on both sides make tactical and
7 strategic calls and undertake various actions
8 that are not necessarily foreseen by the other
9 side. Courts are manned by judges who are
10 people, and so they make decisions. And so
11 you -- while you might have a good sense as to
12 how you think any given issue might come out,
13 there's no way to predict with certainty how
14 any given judge will rule on any given issue
15 on any given day, and that could have a
16 material impact on the cost of the litigation.

17 So just as a for instance, you may
18 think that you have a very good motion or a
19 basis not to have to review large volumes of
20 documents, but the Court might disagree with
21 you and therefore the scope of discovery might
22 be orders of magnitude greater than you
23 thought or the opposite is the case. You
24 might think that you're going to have to
25 review troves and troves of documents, but you

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2 get a ruling from a Court unexpectedly that
3 limits the scope of discovery or you win on a
4 motion to dismiss that you didn't think you
5 were going to win so it knocks out various
6 claims or whatever the case may be.

7 So you have judges that will rule.
8 And because they're human and because lawyers
9 are human, you can't fully predict how that
10 will go. You have no ability to control what
11 the other side, what your adversaries will do,
12 whether they make a lot of motions, fewer
13 motions, whether they seek more or fewer
14 depositions. So that's what I mean by it is
15 inherently uncertain. You cannot predict how
16 the process will go. As I say to my clients
17 who are sports fans, can you tell me today
18 who's going to win the Super Bowl next year?
19 The answer is no, you can't, and that's why
20 they play the games. And litigation has a bit
21 of element to that.

22 Q. You go on in that same sentence to
23 say that "Litigation is impossible to predict
24 with certainty what any given case will cost
25 to litigate." And that's your view?

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2 A. Yes, you can't omit the "with
3 certainty." It is impossible to predict with
4 certainty what the case will cost.

5 Q. Okay. So I want to compare and
6 contrast that with another statement you made
7 in the first sentence -- in the first
8 paragraph. Do you see the phrase "reasonable
9 degree of certainty"?

10 A. Yes.

11 Q. For the record, it reads "I
12 estimate to a reasonable degree of certainty
13 that the reasonable range of BNYM's defense
14 costs would be approximately 25 million to
15 40 million." Did I read that correctly?

16 A. I believe you did.

17 Q. And that's your opinion?

18 A. It is.

19 Q. And focusing your attention on the
20 phrase "reasonable degree of certainty"?

21 A. Yes.

22 Q. First of all, why do you use that
23 phrase?

24 A. That's typically the standard when
25 you're offering -- an expert is offering an

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2 opinion.

3 Q. What do you understand "reasonable
4 degree of certainty" to mean when used -- when
5 offering an expert opinion?

6 A. I have a reasonably high degree of
7 confidence that the estimate of the reasonable
8 range of defense costs as set forth is a
9 reasonable estimate, it's a good estimate.

10 Q. And so I'd like to -- focusing your
11 attention again on that phrase, "reasonable
12 degree of certainty" in the first paragraph
13 and then your statement in the second
14 paragraph that it's impossible to predict with
15 certainty with any given case will cost to
16 litigate, how do you square those two
17 statements?

18 A. I think you noted at the outset
19 when you first started asking the questions,
20 wow, that's quite a range, 25 to \$40 million.
21 I have a reasonable degree of certainty that
22 it's a reasonable estimate that the defense
23 will be between 25- and \$40 million. That is
24 hardly predicating with certainty what the
25 case will actually cost to the dollar. That's

1 DANIEL P. GOLDBERG (1/10/19)

2 how.

3 Q. So your reasonable degree of
4 certainty is based on the fact that you've
5 given a fairly wide range?

6 A. The reasonable degree of certainty
7 means that I have a high degree of confidence
8 in the opinion that I'm offering. That's what
9 that phrase means in the first paragraph.

10 Q. Okay.

11 A. So I have a reasonable degree of
12 certainty that my opinion is good and
13 accurate. My opinion is a reasonable range of
14 defense costs is between 25- and \$40 million.

15 Q. Okay. Do you have a reasonable
16 degree of certainty that it's going to cost
17 \$40 million?

18 A. That it will cost \$40 million?

19 Q. Yes.

20 A. I would not say that.

21 Q. Why won't you say that?

22 A. Because it's not what I believe. I
23 believe that it could cost as much as
24 \$40 million. I do not believe that -- I would
25 not offer an opinion that it will cost

1 DANIEL P. GOLDBERG (1/10/19)

2 \$40 million.

3 Q. And why won't you offer an opinion
4 that it will cost \$40 million?

5 A. Why will I not?

6 Q. Yes.

7 A. Because I don't know that it will.
8 It may very well cost less. It could cost
9 more, but it very well could cost less.

10 Q. What do you mean it very well may
11 cost less?

12 A. I give a range of 25- to
13 \$40 million, so I believe that it could cost
14 anywhere from 25- to \$40 million. If I
15 thought it would definitively cost
16 \$40 million, that's the opinion I would have
17 given. But it's not what I believe. I
18 believe that it's a range. It's impossible to
19 give a specific number if you're billing by
20 the hour. It's impossible.

21 Q. Is it possible that the case will
22 cost less than \$25 million to litigate?

23 A. Yes.

24 Q. And why do you say that?

25 A. It could end early. A motion to

1 DANIEL P. GOLDBERG (1/10/19)

2 dismiss could be granted, the parties could
3 settle. I mean, any number of things could
4 happen.

5 Q. Is it more difficult to predict the
6 anticipated costs of discovery further out in
7 the lifecycle of the litigation?

8 A. Could you clarify that question for
9 me?

10 Q. Yes. So litigation occurs in a
11 series of steps, which I think you've set out
12 as components under the ABA model; is that
13 fair?

14 A. Yes, but they're not necessarily
15 seriatim. Sometimes they are concurrent, but
16 okay.

17 Q. Okay. So they're not necessary
18 rigidly sequential. Fine. I agree. But some
19 are closer to the beginning of litigation and
20 some are closer to the end of litigation; is
21 that fair?

22 A. I think that's fair.

23 Q. Okay. And is it more difficult to
24 predict with accuracy what it's going to cost
25 the components of litigation at the end than

1 DANIEL P. GOLDBERG (1/10/19)

2 it is to estimate the cost of those that are
3 temporally closer?

4 A. I won't quibble with your question.
5 I think generally speaking that's probably
6 fair.

7 Q. Okay. Well, it sounds like you
8 wouldn't adopt my question, so how would you
9 state it?

10 A. It's -- I'm looking at it on the
11 realtime, so it's -- it is more difficult to
12 predict what it will cost -- what components
13 will cost that occur much later in the case
14 than the ones that are going to occur more
15 close in time. I think that's a fair
16 estimate -- a fair statement.

17 Q. You said it better than I did.
18 Thank you.

19 A. I mean, there could be exceptions
20 to that, but I think just generally speaking,
21 that's a fair statement.

22 Q. Okay. So turning your attention to
23 paragraph 63. Do you have that before you?

24 A. I do.

25 Q. This is a paragraph we talked about

1 DANIEL P. GOLDBERG (1/10/19)

2 before, but I just want to focus on it for a
3 couple of minutes. And for the record, it
4 reads "Based on my experience in complex
5 litigation matters, my opinion is that BNYM
6 will reasonably spend approximately 1- to
7 2.25 million (1400 to 2700 hours) on case
8 assessment, development and administration
9 over the life of the anticipated litigation."

10 Did I read that correctly?

11 A. You did.

12 Q. And that's your opinion?

13 A. It is. Reading this now, I might
14 substitute the word "will" for "could." It's
15 probably written a little too definitively
16 that they will spend that amount of money, but
17 generally speaking it is my opinion.

18 Q. Now, 1400 to 2700 is fairly broad
19 range; would you agree?

20 A. It's reasonably broad.

21 Q. And so 1400 is almost half of 2700,
22 right?

23 A. It's more than half, but sure, I
24 understand what you're saying.

25 Q. Did you make any effort to break

1 DANIEL P. GOLDBERG (1/10/19)

2 down that total range by the subsections that
3 follow in the following paragraphs?

4 A. Yes. If you look at Exhibit 2, it
5 is. And, in fact, it was done in the reverse.
6 It was done with the subsections and then
7 tallied up, and that's how you got to the
8 numbers that are reflected in paragraph 63.

9 Q. Okay. Just focusing your attention
10 on the first phrase, "Based on my experience
11 in complex litigation matters," is there any
12 other basis for the opinion expressed in this
13 paragraph?

14 A. Just my experience and judgment.

15 Q. Have you been asked to express any
16 opinions with respect to the indemnification
17 rights or obligations of the parties in this
18 matter?

19 A. No.

20 Q. Do you have any personal knowledge
21 of any discussions or negotiations concerning
22 the indemnification rights or obligation in
23 this matter?

24 A. No.

25 Q. So you're not offering an expert

1 DANIEL P. GOLDBERG (1/10/19)

2 opinion on that matter?

3 A. Correct.

4 Q. And you have no factual knowledge
5 about that?

6 A. Correct.

7 MR. WELCH: I'd like to just take
8 a break to review my notes and I think
9 we're done.

10 MR. MOSCATO: I may have -- sorry
11 I passed, but if you would indulge me,
12 I have two minutes worth of additional
13 questions.

14 MR. SOLOMON: I'm not troubled by
15 the passing back and forth, but
16 where's that 12:45 estimate.

17 EXAMINATION BY

18 MR. MOSCATO:

19 Q. This is a hypothetical question for
20 you.

21 A. Okay.

22 Q. If only the Ambac action were going
23 forward and not the Whitebox action, would
24 that materially change your estimate of
25 anticipated reasonable legal fees?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. I'd have to do that work, which I
3 haven't done. So the short answer is I don't
4 know, I'd have to do the work. As I sit here
5 just thinking about it extemporaneously, it
6 probably would have some impact, I don't know
7 the magnitude. I mean, as a for instance, one
8 of the assumptions is there would be ten
9 depositions per party. If one of the parties
10 weren't the party, there'd probably still be a
11 few depositions, but maybe not ten. There
12 might be fewer motions because you've got one
13 fewer party and things like that, but I
14 haven't done that work.

15 Q. But is it fair to say, even though
16 you haven't done the work, your sense is it
17 would reduce to some extent the amount of
18 reasonable anticipated legal fees?

19 A. I would think it would likely
20 result in some reduction.

21 Q. But you can't -- as you sit here
22 today, you can't estimate it because you
23 haven't been asked to do that, right?

24 A. Correct.

25 Q. At page 107 you were answering a

DANIEL P. GOLDBERG (1/10/19)

question by my colleague and you were talking about complex commercial cases where we could find publicly reported fees and fee estimates and things like that. So we did that. And you say "That gave me comfort that notwithstanding your kind questions here today about how \$40 million sounds like a crazy number, I found other cases where fee applications were in excess of 40 million for comparable litigations and things."

Did you find other cases where fee applications in excess of 40 million were for lawsuits brought against trustees for malfeasance?

A. I don't know if -- if I said "fee application," then I'm going to quibble a little bit and then I'm going to answer --

Q. Well, you did say that.

A. I may very well have.

Q. Well, that's what's recorded.

A. I understand. Fee application may not have been accurate, but we found at least one circumstance where the estimated fees were \$50 million and up in a claim against the

1 DANIEL P. GOLDBERG (1/10/19)

2 trustee by noteholders claiming malfeasance by
3 the trustee. And that was the BlackRock
4 matter.

5 MR. MOSCATO: Okay. I'll look
6 into that.

7 Q. BlackRock you said?

8 A. BlackRock.

9 Q. And that's in your report?

10 A. It is.

11 MR. MOSCATO: We'll look into
12 that. That's all I have.

13 THE WITNESS: Thank you.

14 EXAMINATION BY

15 MR. WELCH:

16 Q. Mr. Goldberg, just to round it out,
17 how much has your firm been paid in connection
18 with your retention in this matter?

19 A. Actually been paid; I don't know.

20 Q. Or rather, how much has the firm,
21 your firm, billed?

22 A. I don't know.

23 Q. Do you have just some general sense
24 how much your firm expects to make on this
25 engagement?

1 DANIEL P. GOLDBERG (1/10/19)

2 A. I really don't. I really don't.
3 We're billing by the hour at our standard
4 rates. It is not a particularly large team,
5 and it is not a particularly lengthy
6 assignment, so I don't believe it will be a
7 particularly large number comparatively
8 speaking, but I don't know.

9 MR. WELCH: I have no further
10 questions.

11 MR. SOLOMON: Thank you all very
12 much. Thank you for the courtesy.

13 (Time noted: 12:54 p.m.)
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25

1 DANIEL P. GOLDBERG (1/10/19)

2
3 J U R A T

4
5
6 I, DANIEL P. GOLDBERG, do hereby
7 certify under penalty of perjury that
8 I have read the foregoing transcript
9 of my deposition taken on January 10,
10 2019; that I have made such
11 corrections as appear noted herein in
12 ink, initialed by me; that my
13 testimony as contained herein, as
14 corrected, is true and correct.
15
16

17 _____
18 DANIEL P. GOLDBERG
19

20 Subscribed and sworn to before me

21 This _____ day of _____, 2019.
22

23 _____
24 NOTARY PUBLIC
25

DANIEL P. GOLDBERG (1/10/19)

-----I N D E X-----

WITNESS: DANIEL P. GOLDBERG

EXAMINATION BY	PAGE
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MR. MOSCATO	5, 151
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MR. WELCH	114, 154
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-----E X H I B I T S-----

GOLDBERG EXHIBIT	FOR I.D.
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Goldberg Exhibit 1,	5
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Declaration of Daniel P. Goldberg	
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Goldberg Exhibit 2,	5
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Exhibit D to the Declaration	
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1 DANIEL P. GOLDBERG (1/10/19)

2 C E R T I F I C A T E

3
4 STATE OF NEW YORK)
: SS.:

5 COUNTY OF RICHMOND)
6

7 I, AYLETTE GONZALEZ, a Notary Public
8 for and within the State of New York, do
9 hereby certify:

10 That the witness, DANIEL P.
11 GOLDBERG, whose examination is hereinbefore
12 set forth was duly sworn and that such
13 examination is a true record of the testimony
14 given by that witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or by marriage and that I am in no
18 way interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 10th day of January, 2019.

21 
22

23 AYLETTE GONZALEZ
24
25

DANIEL P. GOLDBERG (1/10/19)

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In re: The Financial Oversight
and Mgmt Board for Puerto Rico

Dep. Date: January 10, 2019

Deponent: DANIEL P. GOLDBERG

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DANIEL P. GOLDBERG

SUBSCRIBED AND SWORN BEFORE ME,

This____ day of_____, 2019.

Notary Public

My Commission Expires:_____